



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



THE LAW LIBRARY

The
James Irvine Foundation

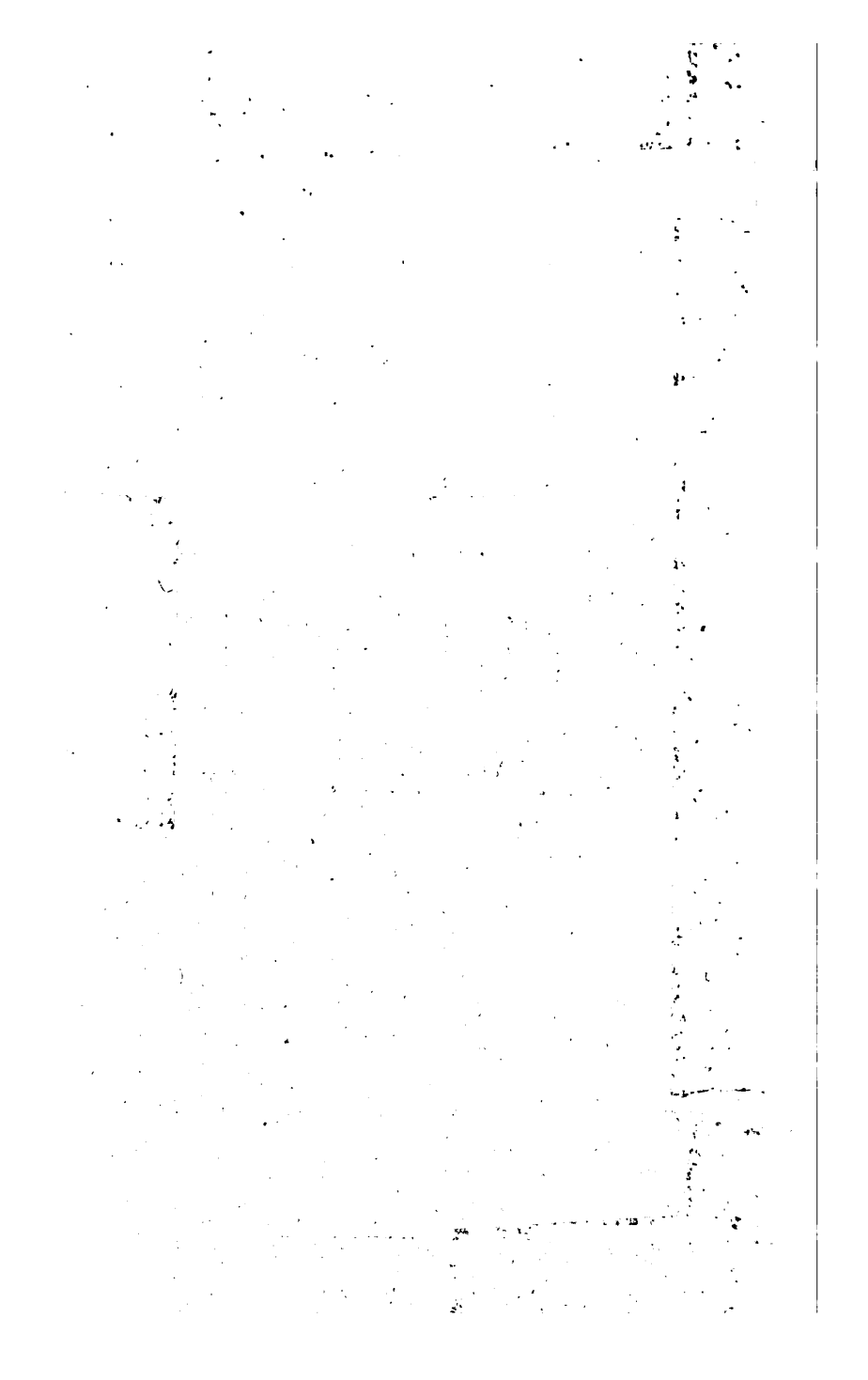


AP
AMC
MUj

STANFORD LAW LIBRARY



THE
"JEFFERSON BORDEN"
MUTINY.



AP
AM
MU
CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

Miller, George, defendant.

THE JEFFERSON BORDEN MUTINY.

TRIAL OF

GEORGE MILLER,

JOHN GLEW AND

WILLIAM SMITH

FOR

MURDER ON THE HIGH SEAS.

BEFORE CLIFFORD AND LOWELL, JJ.

BOSTON:

PRINTED UNDER DIRECTION OF THE CLERK OF THE COURT.

1876.

COPYRIGHT :
BY JOHN G. STETSON.
A. D. 1875.

STEREOTYPED AND PRINTED BY
Alfred Mudge & Son, 34 School Street.

PREFACE.

THE following pages are printed to preserve a record of one of the most important criminal trials ever had in the Courts of the United States. Honorable Nathan Clifford, Associate Justice of the Supreme Court of the United States, and Honorable John Lowell, District Judge of the United States for the District of Massachusetts, presided at this trial, and decided many closely contested points of law argued in behalf of the prisoners by eminent counsel, two of whom have lately held the office of Assistant Attorney General of the United States, and in behalf of the Government by the Honorable George P. Sanger, Attorney of the United States for the District of Massachusetts, and his able assistant, Prentice Cummings. Mr. Justice Clifford's charge to the jury is very full upon the relative duties of the court and the jury in criminal causes and the law of evidence relating to confessions, and his remarks to the prisoners, Miller and Smith, on passing sentence, clearly define the safeguards which the law has provided for persons charged with crime.

A stenographic report of the trial enables me to present the evidence exactly as the several witnesses gave it. The story of the mutiny, as told by Mrs. Patterson, the captain's wife, will be long remembered by the excited crowd of spectators who thronged the court-room while she was on the witness stand. This story loses none of its interest by being reproduced in print.

JOHN G. STETSON.

Boston, Jan. 1, 1876.

THE

PROGRESS OF

THE

ARTS AND

MANUFACTURES

IN

THE

UNITED STATES

OF AMERICA

FROM

1790 TO 1860

BY

JOHN R. COOPER

OF THE

AMERICAN ANTI-QUARIAN SOCIETY

NEW YORK

1860

TABLE OF CONTENTS.

	PAGE
INDICTMENT	9
ARRAIGNMENT, PLEAS OF NOT GUILTY, ETC.	14
ASSIGNMENT OF COUNSEL TO PRISONERS	14
EMPANELING OF JURY, ETC.	14
CHARGE TO THE JURY	15
VERDICT	35
REMARKS OF THE COURT ON PASSING SENTENCE	36
SENTENCES OF GEORGE MILLER AND WILLIAM SMITH.	40

EVIDENCE.

EXAMINATION OF CHARLES TIFT AND GEORGE W. TOWNE	43
“ WILLIAM M. PATTERSON (Captain)	43
“ HENRY AIKEN (Cook and Steward).	92
“ JACOB LIMBER (Seaman)	109
“ HENRY MALAHEINE (Boy).	125
“ FREDERIC A. PETTIGROVE (Deputy Marshal).	127
“ AVERY PLUMER (Passenger on “Batavia”)	127
“ HENRY AIKEN (recalled)	128
“ WILLIAM M. PATTERSON (recalled).	128
“ MRS. EMMA J. PATTERSON (Captain's wife)	128
“ WILLIAM S. FROST (Registrar, Custom House).	141
“ RICHARD M. HODGES (Physician)	141
“ WILLIAM L. RICHARDSON (Physician)	141

Circuit Court of the United States,

DISTRICT OF MASSACHUSETTS.

THE JEFFERSON BORDEN MUTINY.

THE UNITED STATES OF AMERICA

v.

GEORGE MILLER,

JOHN GLEW,

WILLIAM SMITH.

MURDER ON THE HIGH SEAS.

INDICTMENT.

UNITED STATES OF AMERICA.

**CIRCUIT COURT OF THE UNITED STATES OF AMERICA, }
FOR THE DISTRICT OF MASSACHUSETTS.**

At a Circuit Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said district, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-five,

The JURORS for the United States of America, within and for the District of Massachusetts, upon their oath, present :

That heretofore, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-five, George Miller, John Glew and William Smith, otherwise called Ephraim Clark, mariners, in and on board of a certain American vessel, to wit, the schooner called the

"Jefferson Borden," then and there owned by and belonging to George G. Towne, Asa F. Tift, Charles Tift and William M. Patterson, all then and now citizens of the United States of America, on the high seas, within the admiralty and maritime jurisdiction of the said United States, and out of the jurisdiction of any particular State thereof, with force and arms, piratically, feloniously, wilfully and of their malice aforethought, upon one Corydon Trask Patterson, in the peace of the said United States then and there being, an assault did make, and that the said Miller, then and there with a certain piece of iron, piratically, feloniously, wilfully and of his malice aforethought, did strike the said Corydon in and upon the head of the said Corydon, thereby giving to the said Corydon, and upon the head of the said Corydon, with said piece of iron, and by said striking with said piece of iron, one mortal wound, — a more particular description of which wound is to your said jurors unknown, — of which said wound said Corydon did then and there instantly die; and that said Glew and said William Smith, otherwise called Ephraim Clark, then and there knowingly, piratically, feloniously, wilfully and of their malice aforethought, were present, aiding and abetting the said Miller, the said piracy, felony and murder, in manner and form aforesaid, to do, commit and perpetrate; and so the jurors aforesaid, on their oath aforesaid, do say and present that the said George Miller, the said John Glew and the said William Smith, otherwise called Ephraim Clark, piratically, feloniously, wilfully and of their malice aforethought, him the said Corydon Trask Patterson then and there, in manner and form aforesaid, did kill and murder; against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-five, George Miller, John Glew and William Smith, otherwise called Ephraim Clark, mariners, in and on board of a certain American vessel, to wit, the schooner called the

"Jefferson Borden," then and there owned by and belonging to George G. Towne, Asa F. Tift, Charles Tift and William M. Patterson, all then and now citizens of the United States of America, on the high seas, within the admiralty and maritime jurisdiction of the said United States, and out of the jurisdiction of any particular State thereof, with force and arms, piratically, feloniously, wilfully and of their malice aforethought, upon one Corydon Trask Patterson, in the peace of the said United States then and there being, an assault did make, and then and there with a certain piece of iron, piratically, feloniously, wilfully and of their malice aforethought, did strike the said Corydon, and upon the head of the said Corydon, thereby giving to the said Corydon, and upon the head of the said Corydon, with said piece of iron, and by said striking with said piece of iron, one mortal wound, — a more particular description of which wound is to your said jurors unknown, — of which said wound said Corydon did then and there instantly die; and so the jurors aforesaid, on the oath aforesaid, do say and present that the said George Miller, the said John Glew and the said William Smith, otherwise called Ephraim Clark, piratically, feloniously, wilfully and of their malice aforethought, him the said Corydon Trask Patterson then and there, in manner and form aforesaid, did kill and murder; against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-five, George Miller, John Glew and William Smith, otherwise called Ephraim Clark, mariners, in and on board of a certain American vessel, to wit, the schooner called the "Jefferson Borden," then and there owned by and belonging to George G. Towne, Asa F. Tift, Charles Tift and William M. Patterson, all then and now citizens of the United States of America, on the high seas, within the admiralty and maritime jurisdiction of the said United States, and out of the jurisdiction of any particular State thereof, with force

and arms, piratically, feloniously, wilfully and of their malice aforethought, upon one Corydon Trask Patterson, in the peace of the said United States then and there being, an assault did make, and him the said Corydon piratically, feloniously, wilfully and of their own malice aforethought, and with intent him the said Corydon then and there and thereby to kill and murder, did seize and cast overboard from and out of said vessel into the said high seas, by reason whereof the said Corydon was then and there thereby in said high seas suffocated and drowned, and instantly died; and so the jurors aforesaid, on their oath aforesaid, do say and present that the said George Miller, the said John Glew and the said William Smith, otherwise called Ephraim Clark, piratically, feloniously, wilfully and of their malice aforethought, him the said Corydon Trask Patterson then and there, in manner and form aforesaid, did kill and murder; against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-five, George Miller, John Glew and William Smith, otherwise called Ephraim Clark, mariners, in and on board of a certain American vessel, to wit, the schooner called the "Jefferson Borden," then and there owned by and belonging to George G. Towne, Asa F. Tift, Charles Tift and William M. Patterson, all then and now citizens of the United States of America, on the high seas, within the admiralty and maritime jurisdiction of the said United States, and out of the jurisdiction of any particular State thereof, with force and arms, piratically, feloniously, wilfully and of their malice aforethought, upon one Corydon Trask Patterson, in the peace of the said United States then and there being, an assault did make, and then and there, with a certain piece of iron, piratically, feloniously, wilfully and of their malice aforethought, did strike the said Corydon, and upon the head of the said Corydon, thereby giving to the said Corydon, and upon the head of the said Corydon, by said striking with said

piece of iron, one mortal wound, — a more particular description of which wound is to your said jurors unknown, — and did then and there piratically, feloniously, wilfully and of their malice aforethought, lay hold of and cast the said Corydon overboard from and out of said vessel into the said high seas, whereby by reason of said striking and said casting overboard from and out of said vessel into said high seas said Corydon did suffocate, drown and instantly die; and so the jurors aforesaid, on their oath aforesaid, do say and present that the said George Miller, the said John Glew and the said William Smith, otherwise called Ephraim Clark, on said twentieth day of April, on board said vessel and on the high seas aforesaid, within the admiralty and maritime jurisdiction of the said United States, and out of the jurisdiction of any particular State thereof as aforesaid, him the said Corydon Trask Patterson by the said striking and casting overboard, in manner and form aforesaid, piratically, feloniously, wilfully, and of their malice aforethought, did kill and murder; against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the District of Massachusetts is the district in which the said George Miller, John Glew and William Smith, otherwise called Ephraim Clark, were first brought after committing the aforesaid offence.

A true bill.

PHILIP SHORT,

Foreman of the Grand Jury.

GEORGE P. SANGER,

*United States Attorney for the District of
Massachusetts.*

ARRAIGNMENT, PLEAS OF NOT GUILTY, Etc.

George Miller, John Glew and William Smith were arraigned upon the foregoing indictment, on the thirty-first day of August, 1875, in the Circuit Court of the United States for the District of Massachusetts, the Honorable John Lowell, District Judge, presiding, and severally pleaded NOT GUILTY. The Court assigned the following counselors of the Court to the prisoners respectively for their defence, namely:—

CLEMENT H. HILL and RUSSELL GRAY, to Miller,
WALBRIDGE A. FIELD and A. E. PILLSBURY, to Glew,
GEORGE SENNOTT, to Smith.

The prisoners were severally furnished with a copy of the indictment and a list of the jurors in attendance and of the witnesses to be produced on the trial for proving the indictment, and with process to compel the attendance of witnesses in their behalf, in accordance with the statute in such case made and provided. The twenty-first day of September, 1875, was assigned as the day for the trial to commence.

MOTIONS, JURY, Etc.

On the twenty-first day of September, 1875, the Honorable Nathan Clifford, Associate-Justice of the Supreme Court of the United States, and the Honorable John Lowell, District Judge, sitting together and holding the Circuit Court, a plea to the jurisdiction was filed by Smith, and after argument overruled; a motion for a separate trial was filed by Glew, and after argument overruled; and motions to quash the indictment were filed by Miller and Glew, and after argument overruled. A jury was thereupon empaneled and sworn, namely: Jared Pratt, *Foreman*, John Aldred, Milton Abbey, William Bower, Stephen A. Burt, Henry Canning, Gowen Dockum, Frank D. Foster, Jesse Heaven, John Haggerty, Edmund Strickland and George P. Strange.

Each of the jurors before being sworn answered each of the following questions in the negative, namely:—

1. Are you related to either of the prisoners?
2. Have you formed or expressed any opinion as to the guilt or innocence of either of the prisoners?
3. Do you entertain such opinion as would preclude you from finding a prisoner guilty, charged with an offence punishable with death?

After the evidence was introduced, and after arguments by the counsel for each of the prisoners and by the Honorable George P. Sanger, United States Attorney, Mr. Justice Clifford charged the jury, as follows:—

CHARGE TO THE JURY.

CLIFFORD, J.

You are already informed that the prisoners, George Miller, John Glew and William Smith, stand indicted before you for the murder of Corydon Trask Patterson, upon the high seas, on the twentieth day of April, 1875, as alleged in the indictment. At their arraignment they severally pleaded that they were not guilty, and put themselves upon the country for trial, which country you are, and you were duly empaneled and sworn well and truly to try the issue.

Seven days have been spent in listening to the evidence and the arguments of the counsel, and it now becomes my duty, as the organ of the Court on the occasion, to state to you the material rules of law which, in the judgment of the Court, are applicable to the case. Considerable time has already been consumed in the trial, but the most responsible part of your duty remains to be performed, and it is not doubted that you will approach its performance with the same calm deliberation which has characterized your demeanor throughout the whole course of the trial. You have been summoned, empaneled, and sworn in this case to render a true verdict therein according to the evidence. Your duty is well described in your oath, and if you perform it

according to the oath you have severally taken, it will be rightly performed, and it cannot be rightly performed in any other way. Questions of law, however, must be determined by the Court, and in respect to those it is your imperative duty to follow the instructions of the Court. Juries are not the judges of the law in criminal cases under the jurisprudence of the United States. All questions of fact are exclusively within your province, and in respect to such questions you cannot have any aid from the Court. You must determine them from the evidence in the case, after giving due consideration to the arguments of the counsel and the suggestions of the Court, according to your own independent convictions. Trial by jury, in criminal cases, is secured by the Constitution, and under the forms of that trial, all questions of fact involved in the issue of not guilty are exclusively within the province of the jury. In criminal prosecutions, it is not within the legitimate right and proper duty of juries to adjudicate and decide upon questions of law as well as fact. On the contrary, it is a well settled principle and rule, lying at the foundation of the trial by jury, admitted and recognized ever since jury trial has been adopted as an established and settled mode of proceeding in courts of justice, that it is the proper province and duty of the Court to consider and decide all questions of law which arise, and that the responsibility of a correct decision, in that regard, is placed finally on the Court; that it is the proper province and duty of the jury to weigh and consider evidence, and decide all questions of fact; and that the responsibility of a correct decision, in that respect, is placed on the jury. The safety, efficacy and purity of jury trial depend upon the steady maintenance and practical application of this principle. It would be alike a usurpation of authority and a violation of duty for a Court, in a jury trial, to decide authoritatively on the questions of fact, or for the jury to decide ultimately and authoritatively upon the questions of law. The obligations of each are of a like nature, being that of a high legal and moral obligation to the performance of an important duty, enforced and sanctioned by an oath.

Your first purpose will be to examine and understand the true nature and character of the accusation against the prisoners, as it is exhibited to you in the indictment, wherein it is set forth in four forms, all having reference to the same transaction.

[Mr. JUSTICE CLIFFORD here read an analysis of the several counts in the indictment, which is omitted, as the indictment is printed in full on page 9 to 13, inclusive.]

All crimes and offences against the United States, committed in any one of the several States composing the Union, must be tried in the State and district where the offence was committed. Offences committed upon the high seas, out of the limits of any particular State, stand upon a different principle, and must be tried as directed in the second section of the third article of the Constitution, at such place or places as the Congress may by law have directed. Congress legislated very early upon the subject, and the provision first adopted is still in full force and unrepealed, and has been substantially repeated in a subsequent Act.

By the eighth section of the Act of April 30, 1790, it was provided that the trial of crimes committed on the high seas, within the admiralty and maritime jurisdiction of the United States, out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended or into which he may first be brought. No material change is made of that provision in the Revised Statutes. All of the prisoners were sent home for trial, and were first brought into this district; and of course their respective crimes, if any they committed, as charged in the indictment, are cognizable in the Circuit Court of the United States for this district.

Homicide is of various degrees, embracing every mode by which the life of one man is taken by the act of another. It may be lawful or unlawful, according to the circumstances under which it was committed. Your attention will, however, be more particularly directed to two species of criminal homicide, known as murder and manslaughter. Neither of these offences is very fully defined in the Acts of Congress prescribing their punishment. Their definitions must be

drawn from the common law of the States, as it was known and understood in the Courts of the States when the judicial system of the United States was organized. Murder is the unlawful killing of any person in the peace of the United States, with malice aforethought, either express or implied. Malice is an essential ingredient of murder, and constitutes the characteristic criterion by which murder is distinguished from manslaughter or the other species of homicide. When the law makes use of the term "malice aforethought," it is not to be understood in the sense of malevolence or ill-will to the deceased, but as meaning that the fact was attended with such circumstances as are the ordinary indications of a wicked and depraved heart, acting voluntarily, regardless of social duty.

Malice, in common acceptation, means ill-will against a person; but in a legal sense, it means that the wrongful act charged was done without just cause or excuse. It may be express or implied, or rather inferred, from the circumstances attending the act. Express malice is, when one person kills another with a sedate, deliberate mind and formed design, such formed design being evidenced by external circumstances discovering the inward intent, as lying in wait, antecedent menaces, former grudges, or any concerted scheme to do the party any great bodily harm. Malice may be inferred from any deliberate, cruel act committed by one person against another, however sudden the act may be. Accordingly, when one man kills another suddenly, without such provocation as will excuse or extenuate the act, a jury is fully authorized to presume from the circumstances that it was done with malice, as no person, unless of an abandoned heart, could be guilty of such an act upon a slight or no apparent cause. The law also authorizes the inference that the natural or probable effects of any act deliberately done was intended by the agent, and in consonance with this principle, if the act producing death be such as is ordinarily attended with dangerous consequences, as by the use of a deadly weapon, it is strong evidence of malice, unless the circumstances attending the act, were of such a character as

to explain or rebut that presumption; and in all cases where death ensues from acts done recklessly, wantonly, or under circumstances of inhumanity or cruelty, the question of malice is for the consideration of the jury. Manslaughter is the unlawful killing of any person in the peace of the United States, without malice aforethought, either express or implied. It is of two kinds, voluntary and involuntary. Voluntary manslaughter is, where the act is committed with a real design to kill, but from the violence of sudden passion occasioned by some great provocation, which the law considers sufficient to palliate the offence. Involuntary manslaughter is, where a man doing an unlawful act, not amounting to felony, by accident kills another, and is distinguishable from homicide, excusable from misadventure in this, that misadventure always happens in the commission of a lawful act, but involuntary manslaughter in the prosecution of an unlawful act. When a person also does an act, lawful in itself, but in an unlawful manner, this excepts the killing from the class of homicide, excusable through misadventure, and makes it voluntary manslaughter; and it may be stated, as a general rule, that manslaughter differs from murder in this, that though the act which occasioned the death be unlawful, or likely to be attended with bodily mischief, yet the malice, either express or implied, which is the very essence of murder, is presumed to be wanting, and the act being imputed to the infirmity of human nature, the punishment is proportionably lenient.

Such is the charge against the prisoners, and to that charge they have pleaded that they are not guilty, and you have been sworn to render a true verdict in the case according to the evidence.

Under the issue in this case you can find all of the prisoners not guilty or guilty on all the counts in the indictment, according to the evidence, or you can find one or more not guilty on one or more of the counts and guilty on the other count or counts, as the case may be; or, in other words, your verdict in the case of each of the prisoners should be the same as it would be if he was tried separately, in which event

you might find him guilty or not guilty on all the counts, or you might find him not guilty on one or more of the counts and guilty on the other count or counts of the indictment, as the case might be in view of the whole evidence. Wilful murder of malice aforethought is alleged in each of the counts of this indictment, but every such count includes the charge of manslaughter, which, as before remarked, is the unlawful killing of any person in the peace of the United States without malice aforethought, either express or implied; and you are instructed that, under the issue submitted to you in this case, you can, if the evidence shows that the homicide alleged was committed by the prisoners, and fails to show beyond a reasonable doubt that it was perpetrated with malice aforethought, either express or implied, find the prisoners not guilty of murder and guilty of manslaughter; but your finding in respect to all and each of the prisoners should be according to your evidence. These principles of law are applicable to this case, and in determining this issue you will bear in mind that the prisoners are presumed to be innocent until they are proved guilty by the evidence beyond a reasonable doubt. Reasonable doubt is that state of the case when, after the entire comparison and consideration of all the evidence, it leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. It is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. On the other hand, it is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances, that the fact charged is more likely to be true than otherwise; but the evidence must establish the truth of the fact to a reasonable moral certainty, — a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. It is incumbent upon the government to prove, beyond a reasonable doubt, the truth of every fact in the indictment necessary in point of law to establish the offence. Many of the facts are not controverted, and to some of those your attention will be first called.

You doubtless understand that the deceased, Corydon T. Patterson, was the mate of the schooner "Jefferson Borden"; that the prisoners were seamen on board that schooner bound on a voyage from New Orleans to London, and that they shipped as able seamen and that they were rated and paid as such; that William M. Patterson was the master of the schooner, that the mate, Corydon T. Patterson, was the brother of the master, and that Charles A. Patterson, a second cousin of the master, was the second mate. Nor is it questioned that the ship's company consisted of the master, mate, second mate, the three prisoners, one other able seaman, Jacob Limber, the steward, Henry Aiken, and the boy, 18 or 20 years of age, called Henry. Mrs. Patterson, the wife of the master, was also on board. By the evidence it appears that the schooner, with a full cargo, left New Orleans on the 3d of March, in charge of a tug, and that she was towed down the river and over the bar under the command of a pilot. Loaded vessels of considerable size usually go down the river from that port and over the bar in tow, and usually secure the aid of a pilot. She came to anchor outside the bar the night of the 4th of March, and sailed from the bar on her contemplated voyage on the following day, which was the 5th of March last. After a few days it appears that the weather became heavy and that it continued to be so for the greater part of the time until the 15th of April, when it became fine, in the language of one or more of the witnesses. Very little complaint is made of the weather after that during the voyage out, and still less from that time until after the time when it is alleged that the prisoners murdered the mate. Attention is called by one or more of the counsel to the condition of the vessel, and particularly to the fact that the jib-boom had been taken in while she lay at the levee and that it had not been replaced, and that part of the rigging had not been put in order before she left to go down the river; but the master states in his evidence that the usual course is to take in the jib-boom at that port while the vessel is lying at the levee, and that it is not uncommon that it is not replaced and rigged until the vessel starts down the river. Such an

explanation deserves to be considered, and inasmuch as it is not contradicted by other evidence, you are fully warranted in regarding it as satisfactory.

Your attention has also been called to the fact that work was required to be done immediately after the vessel sailed to put the inner portion of her in order, and it is also suggested that something was required to be done to tighten some of the rigging, and the master states that there was some work to do in clearing up, which he thought better be done before he divided the crew into two watches. Probably his judgment in that regard was better than that of the counsel or of the Court, and inasmuch as it does not appear that more was required than was reasonable, or that any greater delay in ordering watch and watch ensued than was necessary to enable the master to judge how it was best to constitute the respective watches, you are fully warranted in coming to the conclusion that the evidence does not show any improper conduct on the part of the master.

Complaint is also made in argument that the crew were not properly fed nor properly supplied with good drinking water. Unfounded complaints deserve no consideration, and it will be for you to consider whether those complaints find any satisfactory support in the evidence. If you believe the steward, the vessel was well supplied with all such provisions as are usually furnished by ship-owners for the support of the ship's company. They had an abundant supply of flour and of beef, and he says that the flour and beef were good. Masters of vessels are permitted to carry some small stores, such as preserves, canned meats, fish and fruits for their use in the cabin, and they doubtless occasionally have some delicacies which are not furnished to the seamen; but you will weigh the evidence and determine for yourselves whether it does not show that the seamen, except in a very few instances, were furnished with good bread and beef, and generally with substantially the same quality of food as that served in the cabin. The steward admits that their bread was bad in a few instances and he explains how it happened, and it is for you to judge whether his explanations are not

satisfactory. Even if you should judge that they are not, it is not perceived by the Court that the evidence shows that the master was in fault, and even if he were on those occasions, it would not afford any excuse or justification to the prisoners if it be fully proved that they did and committed the acts charged in the indictment. Some water, it is said, was not fit to drink, and it appears that one of the casks was damaged in a gale, and when the sea broke over the vessel, that some of the salt water flowed into the cask and made the whole contents brackish. Water to supply vessels, it is said, is usually obtained from the river at that port, and it is not proved that the contents of the cask in question were brackish when the vessel sailed, and the master states that when it was served to the crew it was used in the cabin, and the clear inference from the evidence is that the brackish water was not used so late in the voyage as the alleged mutiny and homicide. Evidence of the kind is not offered as affording any defence to the crime charged in the indictment, and if it were it could not in any possible view have such an effect.

Circuit Courts, being Courts of special jurisdiction, it is necessary in every case that the indictment should contain appropriate allegations to show that the crime charged is cognizable by the Court in which the indictment is pending. Such preliminary allegations are found in each of the four counts of the indictment against the prisoners at the bar. They are to the effect that the schooner "Jefferson Borden" is an American vessel, and that the crime charged was committed from or on board said schooner, on the high seas, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State of the United States. Allegations of the kind must be proved in order to show that the offences are cognizable in the Circuit Courts. Evidence upon that subject was accordingly introduced in behalf of the United States. For that purpose the several owners of the vessel were examined, and if you believe them, they prove that the vessel was built in the United States, and that they, one and all, were citizens of the United States. Other witnesses were also examined,

whose testimony, if you believe them, shows that the vessel, on the voyage in question, was commanded by a citizen of the United States, as master; that she was loaded with a cargo of domestic products, that she sailed from a port of the United States, and that she carried the flag of the United States throughout the voyage; and you are instructed that these facts, if proved beyond a reasonable doubt, are fully sufficient to warrant you in finding that the schooner was an American vessel, as alleged in the indictment. Proof of the character of the vessel alone, however, is not sufficient to show the jurisdiction of the Court in the case, as it is also alleged that the crime was committed on the high seas within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State thereof, and that the District of Massachusetts is the district in which the prisoners were first brought after committing the offence. Witnesses were also examined, in behalf of the United States, to prove those jurisdictional facts, and it is not controverted that the evidence introduced is sufficient for that purpose. Whether the witnesses are credible or not is for your consideration, but if the evidence is believed, you are warranted in finding that those allegations are satisfactorily proved and that the jurisdiction of this Court is fully shown.

Homicide if unlawfully committed, with malice aforethought, from or on board a vessel of the United States, on the high seas, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State thereof, is murder, and as such is cognizable in the Circuit Courts, unless where the crime was committed by a foreigner, from or on board such vessel, and consisted of the killing of another foreigner on board of a foreign vessel, belonging to the citizens of a foreign government. During the trial, objections were taken by the prisoners to the sufficiency of some of the counts of the indictment, but those objections were overruled, and you are instructed that the several counts are sufficient in form and substance.

Before the jury was empaneled, one or more of the pris-

oners moved that they be tried separately; but the Court, not being satisfied that the reasons offered in support of the motion were sufficient to render such course necessary to secure a fair trial for the prisoners, overruled the motion, and they have been tried as charged in the indictment. Evidence applicable to all the prisoners you will apply to each in determining the issue formed by their respective pleas of not guilty; but evidence applicable to the case of one of the three prisoners and not to the case of the others, you will wholly disregard in determining the issue between the United States and the others; and you will examine the case of each separately, being careful to remember that the confession of one not made in the presence of another is no evidence against such other, nor is it evidence against such other, even if the confession was made in his presence and hearing, unless the one in whose presence and hearing the confession was made assented to it in some form indicating his acquiescence in what was said by the confessing party. These remarks are particularly applicable to the confessions of the several prisoners given in evidence in this case; but they have no application to the general evidence, showing the events of the night of the 20th of April, nor indeed to the evidence of like character, showing the events which preceded and followed that night during the voyage. These events have been so fully described by the witnesses, and have been so fully and fairly rehearsed by the evidence on both sides, that the Court does not deem it necessary to read the evidence. Without any resort to confessions, is not the evidence, when considered as a whole, sufficient to satisfy you that Corydon T. Patterson died on that night, and that he came to his death by the hand of another? Are you not satisfied from that evidence that the prisoners, Smith and Miller, planned a mutiny that night as early as eight o'clock, and that Glew agreed to join in with them, provided the part assigned to him did not make it necessary that he should take the life of the master, mates or any one on board; and does the evidence of the events of that night convince you, beyond reasonable doubt, that the leading mutineers were the agents

who killed the mates, and that they intended to kill by violence, or ultimately drown all who did not join with them by scuttling and sinking the ship? That the prisoners were all engaged in mutiny is conceded; and if you believe that, it is for you to consider, if they meant to take possession of the ship, and ultimately to sink her when they came in sight of land, whether the plan, if preconcerted, would not naturally contemplate the killing of the master and the mates, as the prisoners, it seems, had no hope of any co-operation from the officers of the vessel. Miller called out the master from his sleeping apartment with a cunningly devised scheme to induce him to go forward, but without success; and Smith, more successful, induced the second mate to go out on the jib-boom. Almost contemporaneous with that, Miller advanced towards the mate, armed with the deadly missile which has been given in evidence, and, when asked by the mate what he wanted, dealt him the mortal blow described in the indictment, which felled him to the deck with the exclamation, "Oh!" twice repeated. Where is he? Enough appears, it is contended by the United States, even without the confession, to satisfy every intelligent and impartial mind that his life ended there at that time, and by the agency of another.

These prisoners are not charged in this indictment with the murder of the second mate; but if you fully believe from the evidence that they were acting on that night in pursuance of a preconcerted plan to kill the officers of the ship and take possession of the vessel and ultimately to scuttle and sink her with all alive on board who would not join with them, you are warranted in considering the general evidence introduced, tending to show that Smith killed the mate, as having such tendency, if any, as you think it deserves, to support the charge that the mate then and there came to his death by the malicious agency of another. Proof of that allegation is essential to the case of the United States, and if not proved beyond a reasonable doubt the prisoners should be acquitted. But in determining that issue, you must consider and weigh the whole evidence introduced to prove it;

and if the general evidence of the events of that night is not, in your judgment, sufficient to prove it beyond a reasonable doubt, you will then examine the evidence of the confessions of the prisoners, subject to the rules already given you in charge and such others as the Court will now proceed to state.

Before any confession can be received in a criminal case it must be shown that it was voluntary. When offered, the practice is to inquire of the witness whether the prisoner had been told that it would be better for him to confess or worse for him if he did not confess, or whether language to that effect had been addressed to him. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers; but a confession forced from the mind by the flattery of hope or by the torture of fear comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it, and therefore it is rejected.

Inquiries were allowed to be made of the witnesses in this case whether any promise of favor or threat of injury were addressed to the prisoners to induce them to make confessions, and nothing of the kind appearing, the objection to the evidence made by the counsel for the prisoners was overruled. Our ruling is conclusive that the evidence was admissible; but you are judges of its probative force and effect, and if you find that the prisoners were told that it would be better for them to confess or worse for them if they did not confess, or any language to that effect, you will give no weight to the confessions. Such a state of fact, however, you cannot find unless the evidence warrants it, and we think you should give the question very full consideration before you come to such a conclusion. Beyond doubt the confessions in this case were introduced to prove both the fact that the mate is dead, and that he came to his death by the unlawful agency of the prisoners. Agency, it is conceded, may be proved by confessions, but some doubts are expressed in

argument, or intimated, whether such evidence is admissible to prove the fact of death, or the *corpus delicti*, as expressed in technical language. No doubt is entertained by the Court upon that subject, and we instruct you that the confessions of the prisoners, if confirmed by circumstances, are admissible to prove the fact of death in a case where direct evidence is unattainable, as in a case like this, or where the body of the deceased was consumed by fire.

[Mr. JUSTICE CLIFFORD here read from the decision of the Court upon the motion in arrest of judgment in the case of the *United States v. Williams and Cox*, in the Maine District, 1 Cliff. 20.]

"The counsel do not contend for the proposition that a conviction can in no case be had without a discovery of the body of the person alleged to be murdered, although there are some decided cases which at first reading seem to favor that view of the law; and such undoubtedly is the general rule in the law of felonious homicide, and it is one which ought always to be enforced whenever direct proof exists and it is practicable to obtain it. Lord Hale said he would never convict any person of murder or manslaughter unless the fact was proved or the body found dead. Cases, however, have occurred and it is greatly to be feared may hereafter occur, where the application of this rule would secure impunity to the murderer, and therefore would be unreasonable, as it would be in the highest degree prejudicial to the course of criminal justice. A murderer would only have to consume the body by fire, or decompose it by chemical means, or sink it in the depth of the sea, and the laws of society would be powerless to punish the offender.

" * * * *United States v. Gilbert et al.*, 2 Sum. 19; Burr on Cir. Ev. 679; *Rex v. Hindmarsh*, 2 Leach, 569; Best on Presumptions, 204, 205.

"Many other cases might be cited to the same effect, but we deem it unnecessary, as the law appears to be well settled upon this point, and it is not controverted by the counsel of the prisoners. Assuming, then, that where it

"is impossible to discover the body, the fact of death may be proved by other means, the inquiry is, by what other means may that proof be made. Must it in all cases be direct proof, or may it be proved by strong and unequivocal circumstances which render it morally certain and leave no reasonable doubt that such is the fact? Not a doubt is entertained by this Court that it may, in the case supposed, be proved in either of the modes suggested; that is, it may be proved by direct evidence, or where such does not exist, it may be proved by cogent circumstances, provided they are sufficient to produce conviction on the mind of the jury and to exclude every reasonable doubt. It must be so, else the laws for the punishment of felonious homicide are insufficient to reach the secret offender, provided he has the opportunity and employs the means to destroy the body."

Repeated confessions are proved in this case, and in view of the circumstances the Court deem it their duty to call your attention to the evidence of the same in considerable detail, both to refresh your memories as to what it is, and to enable you to apply the instructions heretofore given upon the subject with unerring certainty. What we mean is, that the confession of one made in the absence of another cannot affect that other, nor can it affect him even if made in his presence and hearing unless it appears that he assented to it or acquiesced in some form, by silence or otherwise, in the statements. We cannot attempt to reproduce all such evidence given in the case, but will endeavor to refer to it with considerable minuteness even at the risk of being considered tedious.

[Mr. JUSTICE CLIFFORD here read an analysis of the evidence given as to the confessions of each of the prisoners. The portions of the evidence read are printed in this book on the following pages, namely:—

Confessions of Miller, pages 70 to 77, 101 to 104, 117, 135, 136;

Confessions of Smith, pages 71, 72, 79, 80, 101, 117, 118, 136;

Confessions of Glew, pages 81 to 86, 91, 92, 100 to 105, 108, 117, 118, 137, 138.

1. Sufficient appears from the references made to the evidence describing the confessions of Miller to show that they were often repeated and in the presence and hearing of several witnesses. They were direct and full to the fact that Corydon T. Patterson was killed at the time alleged in the indictment, and that he, Miller, was the guilty agent.

Before such evidence can be received in a criminal case, it must be shown that the confession was voluntary. When offered it was objected that it was not voluntary, and the prisoners, by their counsel, were allowed the benefit of a preliminary examination of the witnesses to show, if possible, that the confessions offered were obtained by promises of favor or by threats of injury, but the Court, after argument, ruled that the evidence was admissible, and the effect of that ruling was to admit the evidence offered; but you may still inquire in each case whether the confession proved was voluntarily made, and if you find, from the testimony in the case, that it was not, you will give the evidence no weight whatever; but if you find that it was voluntarily made, without promise of favor or threat of injury, to induce the statement, then it is competent evidence and proper for your consideration, and if you believe the witness who testified to the confession, it is your duty to give it the weight which you think it deserves. Oft-repeated confessions of the kind, if voluntarily made, are certainly deserving of very careful consideration.

2. Smith's confessions are equally direct and explicit to the effect that he knew the plan, that it was to be executed that night, that he killed the second mate, that he was standing by the mainmast armed with a capstan-bar, when Miller struck the mate the mortal blow, and that he assisted Miller in throwing his body overboard; and when asked how he could kill the second mate, who had never done him any injury, he replied to the effect that if they killed one they must kill all. Do you believe these statements and that they were voluntarily made? If so, you must consider them and give them such weight as you think they deserve.

3. Attention will next be called to the confessions of Glew. Such confessions, if voluntarily made, are admissi-

ble ; but the rule is, when the confession of the prisoner is offered in evidence by a prosecutor, the whole confession made at that time must go to the jury, as well that which makes in favor of the prisoner as that which tends to prove him guilty; and it is for the jury to determine whether a part or the whole of it is or is not worthy of credit. Confessions of guilt made at one time cannot be disproved by evidence that the prisoner subsequently denied that he ever did the act admitted in the prior confession, if seasonable objection is made by the prosecutor to the admissibility of the evidence to prove such denial, but if no such objection is made, and the evidence of the subsequent denial is introduced without objection, then both the evidence of the subsequent denial of the confession and the evidence of the confession are for the consideration of the jury, who are the judges of the effect to be given to the whole evidence.

Glew's confessions tend to show that he knew of the plan to mutiny and kill the officers of the ship, or some of them, as early as eight o'clock, on the evening of the day alleged in the indictment, or certainly between ten and eleven of the same evening. Precisely what the details of that plan were does not appear; but the evidence tends to show that it was understood that the plan, whatever it may have been, was to be executed that night. Pursuant to that understanding, Smith adopted measures to lure the second mate forward, and he went out on to the jibboom to fasten the outer sail, and Smith with a capstan-bar in his hand went out after him, as if to assist in mending the sail. Smith hastily returned, but no mortal eye has ever since seen the second mate. Presently the mate came out through the cabin, and passed along, and spoke to the man at the wheel; and after standing there a few brief moments, left and went into the starboard gangway, and having passed out of the sight of the wheelsman, the exclamation, "Oh!" twice repeated, "Oh! oh!" was heard by the wheelsman, and all was silent to his ear, and the mate was never seen or heard of after, unless by those who cast him overboard. Patterson, the master, states, that at one time he asked Glew whether he really did help throw the

mate overboard or not? He said that he did. (Page 81.) * Aiken, when asked, "Did you ever hear Glew say anything in reference to the first mate?" answered, "The only thing he said he 'helped chuck him overboard.'" (Page 104.)

Both the second mate and the mate were then disposed of, so that they could offer no resistance nor give any alarm. Encouraged by the success they had had in executing the plan as arranged, the next step was to put the master out of the way. Accordingly, Miller, as the most effective mutineer, went to the cabin with the cunningly devised falsehood that Glew had broken his leg, and endeavored to lure the master to go forward to assist the man with the broken leg. Appeals were repeatedly made to the master to go forward, without success. But it becomes very important to know where at that time were Smith and Glew, and upon that subject the confessions of Glew are direct and explicit, that he knew of the plan at eight o'clock in the evening, or certainly between ten and eleven, when he was called out of his bunk by Smith. He said, as Aiken testifies, that he "had been talking it over that night at eight o'clock," and when asked with whom, his answer was, "With Miller and Smith." (Page 104.) Again he said, "that they made it up that they were going to kill him (the master) that night." (Page 105.)

At first the master testified that Glew told him that he was first informed of it about eight o'clock that night,—said it was made up between them to do this; but the master subsequently testified that he stated it different ways. "At one time I heard him say he knew it at eight o'clock, and at another time I heard him say that he didn't know until he was called out of his bunk, between ten and eleven o'clock."

If material, you will determine which story is true; but the confessions of Glew are consistent, that when Miller called the master out of the cabin, he, Glew, was standing aft of

* The references to the evidence made by Mr. Justice Clifford were to the manuscript copy furnished by the short-hand reporter. Corresponding references are here made to the evidence as printed in this book.

the forward house with a capstan-bar in his hand, and that Smith was concealed behind the mainmast, armed in the same way. Do not these confessions show that they were lying in wait in pursuance of the plan previously arranged, and that the plan was to kill the master as well as the mate and the second mate?

Whether these confessions speak the true nature of the plan or not is a matter exclusively for your determination; but it is quite obvious that they tend to show that the killing of the mate and the second mate was a part of the same plan, and that the plan was devised before the offence was committed, and as charged in the indictment.

Some of the evidence undoubtedly is properly denominated circumstantial evidence, but it is not correct to include the evidence of confessions in that category. Voluntary confessions fully proved are direct evidence, and as such are entitled to high credit. Where the evidence is circumstantial, the rule is that every circumstantial fact *material* to the hypothesis of guilt must be proved beyond a reasonable doubt, that all the facts should be consistent with the guilt of the prisoner, that the circumstances should be of a conclusive nature and tendency, and that they should to a moral certainty actually exclude every hypothesis but the one proposed to be proved. Deliberate confessions voluntarily made are direct evidence, and when fully proved, if believed by the jury, they are sufficient to establish the agency of the prisoner on a charge of murder, and with corroborative circumstances proved beyond a reasonable doubt they are sufficient to prove the fact of death in a case like the present, in case direct evidence of that allegation is unattainable. Many of the events of that night are without dispute; and in view of those facts and the confessions of Glew, it is not going too far to say that his confessions tend to show that he knew of the plan which included the killing of the mate, and that he was lying in wait to prevent a surprise, or if necessary to protect and defend the immediate actor, or to favor his escape.

[Mr. JUSTICE CLIFFORD *here read from 3 Greenleaf on Evidence, 48.*]

“§ 40. Persons participating in a crime are either principals or accessories. If the crime is a felony, they are alike felons. Principals are such either in the first or second degree. Principals in the first degree are those who are the immediate perpetrators of the act. Principals in the second degree are those who did not with their own hands commit the act, but were present, aiding and abetting it. It is not necessary, however, that this presence be strict, actual and immediate, so as to make the person an eye or ear witness of what passes; it may be a constructive presence. Thus, if several persons set out in concert, whether together or apart, upon a common design which is unlawful, each taking the part assigned to him, some to commit the fact, and others to watch at proper distances to prevent a surprise or to favor the escape of the immediate actors; here, if the fact be committed, all are in the eye of the law present and principals, the immediate perpetrators in the first degree, and the others in the second.”

All of the evidence is for your consideration, but you will bear in mind the instruction already given,—that the prisoners are presumed to be innocent until they are proved guilty, and that the burden is upon the government to prove the whole charge and every element of it beyond a reasonable doubt. They are not only presumed to be innocent until they are proved guilty beyond a reasonable doubt, but they are also presumed to be of good general character, which cannot be assailed by the United States unless they first call witnesses in support of it, in which event the prosecutor is allowed to introduce countervailing testimony. When you return into court the inquiry will be addressed to you in respect to each of the prisoners separately, whether he is guilty or not guilty. Great care should be taken in properly applying the instructions already given you upon this subject, and in order that you may be able to do so with unerring certainty, that portion of the charge is repeated, which is, that, under the issue in this case, you can find all the prisoners not guilty or guilty on all the counts in the indictment according to the evidence, or you can find one or more not guilty on

one or more of the counts and guilty on the other count or counts as the case may be, or, in other words, your verdict in the case of each of the prisoners should be the same as it would be if he was tried separately, in which event you might find him guilty or not guilty on all the counts, or you might find him not guilty on one or more of the counts and guilty on the other count or counts of the indictment as the case might be in view of the whole evidence.

VERDICT.

On the thirtieth day of September, 1875, the cause was committed to the jury, and on the first day of October, 1875, the jury rendered their verdict, as follows:—

GEORGE MILLER, — *Guilty.*

JOHN GLEW, — *Not Guilty.*

WILLIAM SMITH, — *Guilty.*

Upon the rendering of the verdict in this cause, Glew* was discharged upon the indictment. Smith filed a motion in arrest of judgment, which after argument was overruled, and the Court announced that judgment on the verdict must be rendered in the respective cases of Miller and Smith. On the fourth day of October, 1875, Miller and Smith were set to the bar to receive their sentence, and by direction of the Court, being asked if they had anything to say why sentence should not then be passed upon them for the murder of Corydon Trask Patterson, as charged in the indictment against them, and of which they had been found guilty by the verdict of the jury, each replied that his counsel had done all that could be done, and he had nothing further to say. Mr. Justice Clifford, speaking in behalf of the Court, then addressed the prisoners, as follows:—

* Glew subsequently pleaded guilty upon another indictment pending in the Circuit Court, charging him with mutiny on the high seas, and was sentenced to imprisonment at hard labor, for the term of ten years, in the Massachusetts state-prison.

REMARKS OF THE COURT ON PASSING SENTENCE.

CLIFFORD, J.

George Miller and William Smith, alias Ephraim Clark,—Experience shows that the sinful works of men in this life follow them, and your respective cases furnish very striking proof of the instructive lesson involved in the Divine admonition that “the way of the transgressor is hard.” Had you severally obeyed the early command “Thou shalt not kill,” and been willing to fulfil, in good faith, your contract of shipment, you would now, in all human probability, be in the possession of good health, unimpaired by wounds, and be in the full enjoyment of liberty, with all the attendant blessings which the institutions of this country accord, not only to our own citizens, but also to citizens of all other countries who sojourn in our midst. Instead of that, you and each of you are now enclosed in the prisoner’s box and stand convicted of the murder of Corydon Trask Patterson, upon the high seas, from and on board the “Jefferson Borden,” an American vessel, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State thereof, as alleged in the indictment. Congress very early provided that such an act, committed in the manner described, should be considered murder, and punishable with death, and that the offender should be deemed, taken and adjudged to be a pirate and felon. Different language is employed in the Revised Statutes, but the substance and effect of the revision are the same, the provision being that every person who commits murder upon the high seas, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular State thereof, shall suffer death, and the further provision of the same chapter is, that every such person is a pirate.

Murder is the unlawful killing of a person in the peace of the United States, with malice aforethought, either express or implied. Our Constitution and the laws of Congress

afford great safeguards to persons accused of high crimes, some of which were unknown at common law. Persons accused of a capital or infamous offence cannot be held to answer for the same unless on a presentment or indictment of a Grand Jury, and the provision is, that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, if committed within a State, and if not committed within any State that the trial shall be at such place or places as the Congress may by law have directed. Crimes committed upon the high seas, out of the jurisdiction of any of the States, fall within the provision that the offender must be tried at such place or places as the Congress may by law have directed. Offences committed upon the high seas, or elsewhere, out of the jurisdiction of any particular State or district, must be tried in the district where the offender is found or into which he is first brought; and it is alleged and proved that the offence committed by you, and each of you, was committed out of the jurisdiction of any particular State or district, and that you were first brought into this district within the meaning of the Act of Congress prescribing the place for the trial of the offence alleged in the indictment.

Other important safeguards are provided for persons accused of crime in the Constitution and laws of Congress. They must be informed of the nature and cause of the accusation, be confronted with the witnesses against them, and are entitled to have compulsory process for obtaining witnesses in their favor and to have the assistance of counsel in their defence, which latter privilege was denied them by the common law. By the record it appears that you were duly indicted for the crime of which you stand convicted, and the docket entries show that you were seasonably furnished with a copy of the indictment and with compulsory process to compel the attendance of witnesses, and that able counsel were assigned to each of you to conduct your defence. Prisoners indicted for murder are now entitled by law to a list not only of the jurors summoned for their trial, but also to a

38 REMARKS OF COURT ON PASSING SENTENCE.

list of the witnesses to be produced to prove the indictment, and the docket entries show that these requirements of law were, in all respects, fulfilled in your respective cases. Safeguards of the kind in such a trial are of great value to the accused, and were all scrupulously observed in your trial. Nothing so required having been omitted, the Court proceeded to empanel the jury for your trial, and the course of the proceeding justifies the remark that the jury was one selected by you and the other prisoner whose name is given in the indictment. Twenty peremptory challenges are allowed by law to each prisoner, and the minutes show that the right to challenge peremptorily was exercised very freely. Beyond question it was your right to have an impartial jury, and you cannot fail to see, in the judgment of the Court, that your right in that regard was fully enjoyed within the intent and meaning of the Constitution. All the living persons, except yourselves and the other prisoner who was tried with you, who were on board the "Jefferson Borden" during that terrible night, or throughout the continuance of the mutiny, were summoned and examined by the United States, which gave you every opportunity to correct the errors of statement in the testimony of the master, if any existed. Throughout you have been defended by able counsel, and it is not going too far to say that everything which ability, fidelity and experience could effect in your behalf was done to secure a verdict in your favor; but they have been unsuccessful, for the reason, as you must believe, that they could not overcome the probative force and effect of the evidence, much of which consisted of your own confessions. Consider these things, and you perhaps will see that it is your own works that follow you, and you may also conclude that the result confirms the truth of the wise saying that "the wages of sin is death."

Punishment for crime when the offender is duly convicted is essential to the peace and welfare of society. Pursuant to that view, the first Congress under the Constitution defined the crime of murder upon the high seas, and prescribed the punishment for the offender, which provisions have never received any material change. Navigation is a perilous pur-

suit at best, but it cannot be that those who engage in it shall be subjected to mutiny and murder without the laws of Congress being enforced to repress such fearful crimes. Remarks were made during the argument portraying the dangers that innocent persons may be convicted, but there is little danger in that regard if the rules of law, intended for the protection of the accused, are properly enforced by the Court and strictly observed by the jury. They are that the prisoner is presumed to be innocent until he is proved guilty beyond a reasonable doubt, and that the burden of proof is upon the prosecutor to prove the whole charge and every element of it by the same full measure of proof. These rules of law were plainly and explicitly given to the jury in your trial in more than one instance, and not a doubt is entertained by the Court that they were conscientiously observed and applied by the jury to the evidence produced to prove the accusation. What the verdict of the jury is you already know, and it is proper to say that it is satisfactory to both members of the Court. Convicted as you are under such circumstances, you must, in the judicial view, expect to expiate your respective crimes by suffering the punishment prescribed by the Act of Congress. Hope of any other result cannot be afforded to you by the Court, and we most earnestly recommend that you implore pardon of Him who is able to forgive all sins, and that you seek forgiveness at His throne of mercy. Time for repentance is still left to you, which is a high privilege you did not accord to the deceased. When he asked one of you what you wanted, he was instantly felled to the deck by a deadly weapon which the assailant held behind him, concealed in his right hand, and the evidence doubtless satisfied the jury that the other of you was lying in wait to aid and abet the immediate actor who dealt the mortal blow, and that he immediately came out from his hiding-place and assisted the immediate actor in casting the body of the deceased into the open ocean. You gave him no time for prayer or repentance, nor even the opportunity to say one last word for his brother or other friends; but the humanity of the law, even in the execution of its sentence, will give you ample time for

40 REMARKS OF COURT ON PASSING SENTENCE.

repentance, and to seek the forgiveness of your sins through the merits of the Saviour and the Divine plan of salvation.

George Miller,— You stand duly convicted of the murder of Corydon Trask Patterson, as charged in the indictment, and no motion for new trial or in arrest of judgment in your case having been filed, and the Court having announced that judgment must be rendered upon the verdict, nothing remains to be done, in your case, except to pronounce the sentence which the Act of Congress prescribes for your offence.

SENTENCE OF GEORGE MILLER.

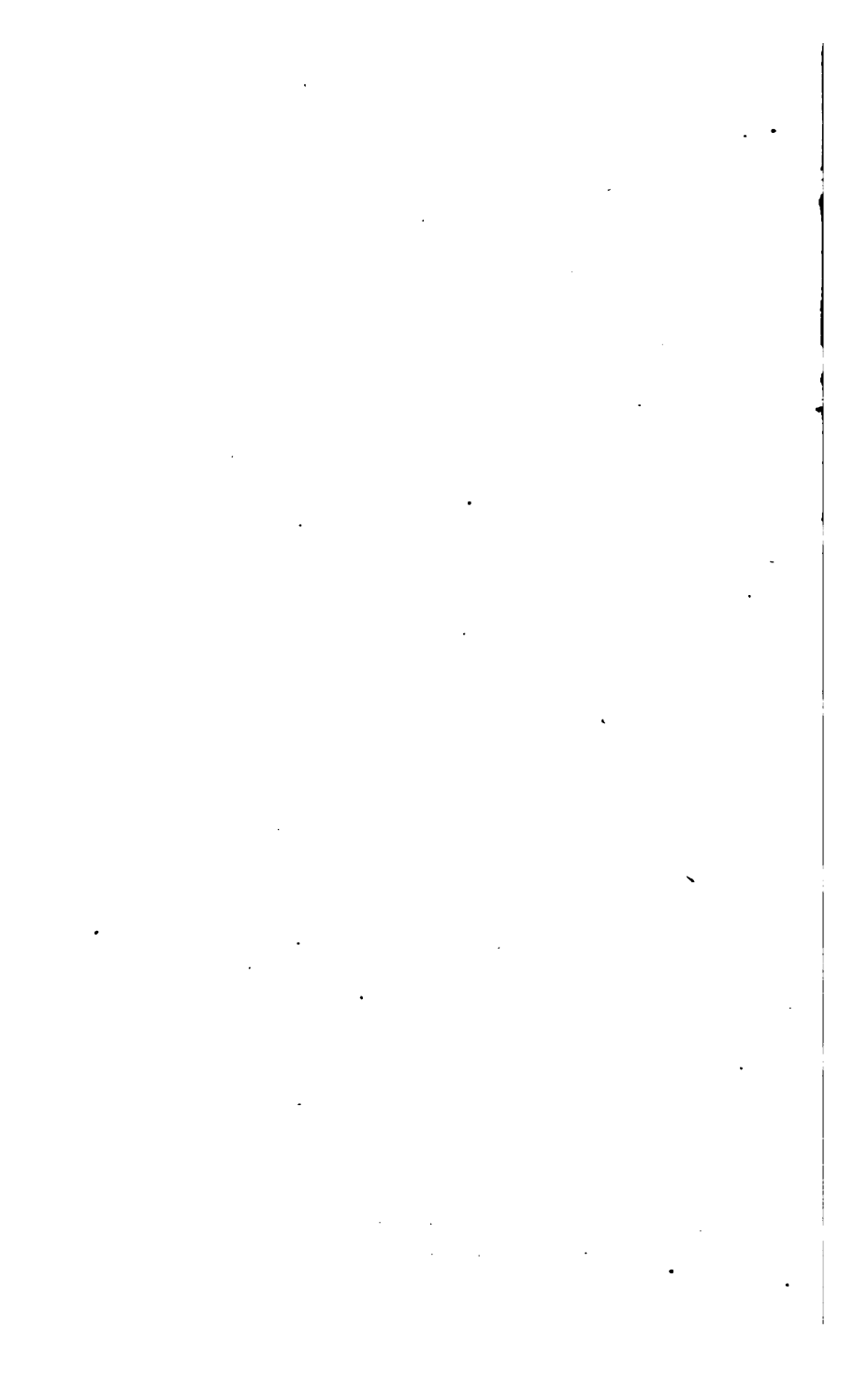
And now, all matters in your case having been fully heard and understood by the Court, It is considered by the Court that the verdict of the jury, in your case, be and the same is hereby confirmed by the Court, and that you, George Miller, be adjudged a pirate, and that you, the said George Miller, be taken back to the place whence you came and there remain, in close confinement, until Friday, the fourteenth day of January next, and that on that day, between the hours of eleven o'clock in the forenoon and one o'clock in the afternoon, you, the said George Miller, be taken thence to the place of execution, and that you be there hanged by the neck until you be dead. And may God have mercy on your soul!

William Smith,— Since the verdict in your case was rendered, your counsel filed a motion in arrest of judgment, which has been heard, considered and decided by the Court, and the same having been overruled and the Court having announced that judgment must be rendered upon the verdict, nothing remains to be done, in your case, except to pronounce the sentence which the Act of Congress prescribes for your offence.

SENTENCE OF WILLIAM SMITH.

And now, all matters in your case having been fully heard and understood by the Court, It is considered by the Court that the verdict of the jury, in your case, be and the same is

hereby confirmed by the Court, and that you, William Smith, otherwise called Ephraim Clark, be adjudged a pirate, and that you, the said William Smith, otherwise called Ephraim Clark, be taken back to the place whence you came, and there remain, in close confinement, until Friday, the fourteenth day of January next, and that on that day, between the hours of eleven o'clock in the forenoon and one o'clock in the afternoon, you, the said William Smith, otherwise called Ephraim Clark, be taken thence to the place of execution, and that you be there hanged by the neck until you be dead. And may God have mercy on your soul!



EVIDENCE.

TESTIMONY FOR THE UNITED STATES.

WEDNESDAY, Sept. 22, 1875.

EXAMINATION OF CHARLES TIFT

AND GEORGE G. TOWNE.

Charles Tift and George G. Towne, part owners in the "Jefferson Borden," were called and examined as to the ownership and the citizenship of the owners of that vessel, on the 20th of April, 1875, the date of the alleged mutiny and murder.

EXAMINATION OF WILLIAM M. PATTERSON.

William M. Patterson testified that he was an American citizen; that on the 20th of April, 1875, he owned one half of the "Jefferson Borden," purchased by him in February, 1872, and that Asa F. and Charles Tift owned one quarter, and George G. Towne the remaining quarter of that vessel; that the "Jefferson Borden," upon her last foreign voyage, sailed from New Orleans for London on the 3d of March, 1875, officered and manned as follows: William M. Patterson, the witness, captain; Corydon T. Patterson, brother of the witness, first mate; Charles A. Patterson, cousin of the witness, second mate; Henry Aiken, cook and steward; George Miller, William Smith, John Glew, Jacob Limber, and a boy, Henry Malaheine, seamen; and with the captain's wife, Emma J. Patterson, a passenger. The witness described at length the position of the houses and other portions of the vessel, and the rooms occupied by the several persons on board. The vessel had a full cargo of cotton-seed oil cake,

and was towed down the river and over the bar. The examination of the witness was then proceeded with as follows:—

Q. (by U. S. Attorney). Did you have any trouble with either of the three defendants after leaving New Orleans?

A. Yes, sir; I had some trouble the day the vessel left the bar.

Q. With whom? *A.* Miller.

Q. State it. *A.* The first trouble I heard was between Miller and the pilot. Miller refused to do as the pilot told him, at the wheel, when the vessel was going over the bar with the steamboat ahead. He told him how he wanted the wheel put; first to port and then to starboard, whichever way the pilot directed him, until, at last, Miller told him it was no use to keep the wheel going that way, and he would not do it.

Q. Is the passage over the bar straight? *A.* It is very narrow. They keep it dug out by a dredging-boat; she keeps one channel through deep enough for vessels to pass out, and you have to keep inside of the mud stakes.

Q. How much did your vessel draw? *A.* About sixteen and a half feet. The pilot was particular about keeping her in the channel.

Q. Is the channel a difficult one? *A.* Yes, sir; it is very narrow.

Q. State what happened after Miller refused. *A.* Miller told him he would keep right for the steamboat, and said that was well enough, and refused to keep her as the pilot told him; and after a while the vessel went ashore. She went ashore on the side of the bank and laid there two hours, until another steamboat came to our assistance, and the two boats took her off. We ran ashore on the port side.

Q. How long a tow-line did you have? *A.* About seventy-five fathoms, six feet to a fathom. There was nothing more said, and the vessel was taken outside and anchored that night. There was nothing said until the next day. There was some trouble between him and the mate. He refused to do as the mate told him. The mate sent him, with another man, up to take the fish pennant up to the mast-head.

Q. What is that? *A.* It is a long pennant we put a tackle on to take the anchors on board with. It is a five-inch rope about thirty feet long.

Q. Such a rope as is usually on vessels? *A.* Yes, sir; a rope that is used on all vessels for that purpose,—for

working the anchors. He refused, and said he could not get it up. He said two men were not enough, and found fault with the mate because the mate sent him up there. I heard him making trouble, and I went forward and told him if he could not do it to come down and let another man go up in his place, and sent another man up to take his place and help get it up. He came down on deck, and he came along where I was standing, and asked me what I wanted of him. I told him I wanted him to do his work, and not make any noise or have any trouble about it. He said he knew how to do his work, and did not care for any man there was on board that vessel; there was nobody there that knew anything. He raised his hand and struck it on his breast, and says, "Here I am; strike me, if you want to." I told him I did not want to fight with him, and told him to go about his work. He said if I wanted anything I could take it out of him, and still stood there. The mate came along, and there was a hatchet lying right alongside and under his feet, and I told the mate to pick up the hatchet and take it away. I saw he was watching it as though he would use it, if he got a chance. I saw the hatchet there, and saw him watching it, and told him to take the hatchet away. He asked the mate what he was going to do with the hatchet. The mate told him he was going to take it out of his way. I told him to go about his work.

Q. What did the mate do with the hatchet? A. Carried it aft, and laid it away out of his reach. He talked some little time, and went about his work again.

Q. Before or after the hatchet was carried off? A. After.

Q. Did you have any other trouble with Miller during that voyage, previous to April 20th? A. Yes, sir; some two or three days after, he refused to go to his work in the afternoon. We had a gale of wind the second day out, and I told the mate to keep all hands in the afternoon and get things in trim.

Q. Were either of these defendants present at the time of this conversation? A. No, sir; the mate reported to me the men would not work. I asked the crew what was the reason they would not go to work, and they said they were going to have watch and watch.

Q. Where were you when the mate reported to you? A. In the cabin.

Q. Where were the crew? A. They were forward.

Q. What did you do? A. I went and told them I had work for them to do, and they must do it that afternoon.

Q. Who was it you told this to? A. All hands; all the men forward in the fore-castle.

Q. What is meant by watch and watch? A. Watch and watch is giving them four hours on and four hours off. The crew is divided into two watches.

Q. What is meant by watch and watch? A. It is keeping one half of the crew up at a time; four hours on and four hours off, four hours on deck and four hours below.

Q. What is the meaning of not having watch and watch? A. The watch that is entitled to their watch off in the afternoon, from twelve to four, are kept up in that watch each day. One day it is the starboard watch's turn to lose a watch, and the other day it is the port watch's turn.

Q. What was done? A. After I talked to them some time, they went to work.

Q. Did you ever give them watch and watch? A. I did, two or three days afterwards.

Q. State whether or not you continued watch and watch from the time you gave it to them? A. The rest of the voyage.

Q. Prior to April 20th, what kind of weather did you experience? A. From the 15th of March to the 15th of April we had very heavy weather. After the 15th of April we had finer, up to the 20th.

Q. Subsequent to this time, did you ever have any trouble with Miller? A. Yes, sir; eight days out of New Orleans. I told the mate to send him up to oil down the main topmast.

Q. Was that order given in the hearing of Miller? A. I could not say whether he heard it or not. I told Miller to go up and oil the mast, and he went up; but instead of oiling the mast as he should, he commenced oiling the topmast-rigging, putting the oil on the rigging as much as he would on the mast. I told him to stop oiling the rigging, and not put any oil on it, as it would spoil the rigging. He said that was as well as he could do it; that was well enough, and if it did not suit me he would come down. I told him to come down.

Q. Whereabouts was he at the time? A. Up at the main-topmast head.

Q. What sustained him there? A. He was hoisted up by the topsail halliards, sitting in what is termed a boatswain's chair, — a piece of board, with a rope attached to it, for him to sit on the board and oil the mast.

Q. State what took place. A. I told Miller he had been trying to make trouble with the officers, and he had been insulting to me before that, and I could not put up with it any longer; he must stop it, and I should put him in irons for making so much trouble, and making trouble on the vessel; that the trouble had gone far enough; that the mates had reported to me that he was all the time making trouble

with them, and I should put him in irons. He said there was nobody aboard the vessel that could put him in irons, and he would not go in irons; he would go forward. I told him he could not go forward. I told him he must go in irons, and took the irons from the mate, and took hold of him, attempting to put the irons on. When I took hold of him, he reached for his sheath-knife that he had in his belt, as I supposed.

Q. What sort of an instrument was this knife,—how large? What did he do? A. I saw him reach for this knife, and at the same time that he reached for it I reached for it. He took it by the handle, and I caught it by the blade at the same time; and when he went to draw it, I twisted the blade in my hand, and broke the knife close to the handle.

Q. Did you take the blade or the sheath? A. The sheath was on a belt made fast to him.

Q. You took hold of what? A. Of the blade as it was in the sheath.

Q. You took hold of it in the sheath? A. Yes, sir. As soon as I broke that, I took hold of him, and attempted to throw him on the deck, and at the same time my brother took hold of him; and we threw him on deck, and put the irons on him.

Q. State the size of the knife. A. It was a common sheath-knife, with a blade about six inches long and a handle four or five inches.

Q. How long was Miller kept in irons? A. Twenty-four hours. At that time he promised, if I would take the irons off, he would go to his duty and do his work, and not try to make any more trouble, or have any more trouble with the mates. He would attend to his work and behave himself. I then wrote a statement in the official log, and asked him if he would sign it, and told him if he would sign it I would release him, and he could go to his work. I also wrote a statement in the log, and read it to the other men, and asked them if they would sign it if I would release Miller. They said they would. I read this to them, and they consented to sign it, and Miller consented to sign it. Then I released him, and let him go to his work.

Q. Did you have any other trouble with Miller from that time up to April 20th? A. No particular trouble.

Q. Did you ever have any with Smith? A. I had some words with Smith the day we left New Orleans. I went into the forecandle soon after we left the levee, and found Glew was there drunk. He could not do anything, and could not stand up. He was sitting down by the forward house. I thought they might have liquor in the forecandle, and went

in there and searched, and found some liquor, and brought it aft. When I was going aft with the liquor, Smith stopped me, and wanted to know what I was going to do with that whiskey, and said it was his. I told him I could not help whose it was, I was going to take it, and take care of it. There was too much of it around, and I was going to take care of it. He asked me to give it to him. I told him I should not, and I took it into the cabin, and kept it some time.

Q. Was there any further trouble with him? A. Some trouble with him and the boy was reported to me. I said to Smith — I think it was about fifteen days before April 20th; might have been before or after that time, I could not say exactly — I said to Smith that the boy reported he had been abusing him, taking him out of his berth, and had thrashed him the night before. Smith told me he did so, and he would do it again if I didn't take the boy out of the fore-castle. He didn't want him to live in the fore-castle with them.

Q. What was the health of the boy at that time? A. He had been sick for a number of days. He said the boy would not get up to stand his watch; said he was as able to stand his watch as he was, and he was playing sick, as he expressed it. I told him the boy was sick, and I would tell him when he was to go on deck. He had no right to trouble the boy, and if he troubled the boy again, I would not allow it; I would stop it. He said if I didn't take him out of the fore-castle he would do it again. I told him if he rope's-ended the boy I would rope's-end him. He said he would, and I took up a rope's-end and just struck him with the rope once. I said, "You strike him, and I will strike you," or something to that effect.

Q. You mean by "rope's-ending" striking a man with a rope? A. Yes, sir.

Q. How old is the boy? A. About eighteen, I should say.

Q. Why did you use the expression "rope's-end"? Had that expression been used before you used it? A. It is very often used. If we want a rope to make anything fast, we say, "Pass me that rope's end."

Q. Did you have any other trouble with Smith on that voyage? A. No, sir; that is the only trouble I ever had with him, only whenever there was any trouble with Miller, Smith would always leave his work when he could, and come to Miller's assistance.

Q. Do you know whether Smith and Miller had ever sailed together before? A. I have heard Smith and I have heard Miller both say that they were together in a ship a voyage before.

Q. Did anything else happen to Smith between the time

you struck him with a rope's end and April 20th? A. There was one night he fell overboard. It was before this Smith fell overboard. He was on deck, the second mate, Jacob Limber, and Smith and myself, and we were furling the spanker. Smith went on the lee side of the house, and the vessel rolled, and the sail slid to leeward, and knocked him overboard. I saw him go overboard, and I called to Jake, and told him Smith was overboard, and to throw him a rope. I at the same time got a rope's end and threw it to him. He got the rope that Jake threw. I took hold of the rope as soon as I found he had hold of it, and took it away from Jake. He was going to haul up on it, and would have hauled it out of his hands. I took hold of it, and held it, and towed him in the water until we had a chance to get another rope with a bowline, and slip it down to him; and I told him to slip it over his head and under his arms. We slipped it down on this rope, and he put it under his arms, and as soon as he told me he had the rope under his arms, we both got hold of him, and hauled him inboard.

Q. Was Jacob where he could see Smith when he fell overboard? A. I think he was. I would not say certain.

Q. Did you have any trouble with Glew, during the voyage, up to April 20th? A. No, sir, I did not; only at the time I attempted to put Miller in irons, he attempted to come to Miller's assistance and not allow me to put him in irons.

Q. Did he say that? A. He said I had no right to put him in irons, and attempted to leave the wheel and come to his assistance. We had him secure before he got there.

Q. What was the weather April 20th? A. That was the finest day we had for over a month.

- The witness further testified that the weather, for five days previous to the 20th of April, was fine; that on that day he took an observation, and ascertained his latitude to be 42° north, and his longitude 25° west; that he had passed the Western Island some two hundred and fifty miles, had made about two thirds the passage from New Orleans to London, from which place he was about nine hundred miles distant. The witness also testified that from six to eight o'clock in the evening of the 20th of April he was in the after cabin with his wife; that the mate was with him about twenty minutes; that it was the mate's watch on deck from six to eight; that Miller, Glew, and the boy Henry were in the mate's watch; that the second mate's watch consisted of

the second mate, Smith, and Limber, and was on deck from eight to twelve midnight. The witness also testified that he gave the orders to the officer for the night, and went to bed at about half-past nine o'clock, and went to sleep.

The examination was continued as follows:—

Q. (by U. S. Attorney). When did you wake up? *A.* I was awakened some time in the night by Miller calling me. I heard his voice in the after cabin of the after house.

Q. Not in the room where you were sleeping? *A.* No, sir.

Q. Where were you sleeping? *A.* In my room, that opens out of the after cabin.

Q. On which side does it open out? *A.* On the starboard side.

Q. This after cabin you have said was your private cabin? *A.* Yes, sir.

Q. You heard Miller there in the night. What did you hear? *A.* I heard him calling me, and I got up. He came to the room door, and says, "Captain, do come forward quick, for John is hurt, and we fear he has broken his leg." I said, "All right." He came to the door, and said, "Do, for God's sake, hurry, Captain!" then he left the cabin.

Q. What did you do? *A.* I started to go out, and my wife—

Q. Did your wife say anything to you when you went out? *A.* Yes, sir; she did.

Q. What did you do? *A.* I went at once out, and followed Miller out of the cabin.

Q. Were you dressed at that time? *A.* I said to Miller, "All right." He then went out of the cabin, and I shortly went out to the front part of the cabin.

Q. (showing paper to witness). What is this? *A.* A plan of the cabin.

Q. Who drew it? *A.* I drew it.

Q. These words that are written,—did you write them? *A.* Yes, sir; the name of each room.

Q. This is a plan of the floor of the after house? *A.* Yes, sir.

Q. You were stating what took place at the time when you followed Miller out. Were you dressed? *A.* I was not dressed. I went to the door, and called to the officer of the deck to know what the trouble was. I said "Mr. Patterson!" and called loud enough to be heard all over the deck. I called a second time. I got no answer to either call. I then went aft back into the cabin, and asked the man at the wheel—

Q. Did you speak to the man at the wheel? A. I went aft, and spoke to the man at the wheel.

Q. What did you do next? A. I then came down into the cabin.

Q. Who was the man at the wheel? A. Jacob Limber.

Q. Did Jacob make any reply? A. He did.

Q. What did you do? A. I then went to my room and dressed myself. I then went to the mate's room to find the mate.

Q. What time was this? A. When I went forward the first time, and called for the mates, I don't know the time. As I returned to the cabin, I looked at the clock, and saw it was ten minutes to twelve. I knew, then, it was the second mate's watch.

Q. What did you find at the mate's room? A. It was dark, and I could not see any one. I felt in his berth to see if he was in his berth, and found he was not there. He was not in his room, but his berth was warm.

Q. Whereabouts did you feel? A. In his bed.

Q. What did you do next? A. Went out on deck on the port side forward, and called again to the mate. I called, "Mr. Patterson!" as loud as I could call, three or four times. I then crossed the deck over on the starboard side, forward of the mizzenmast, and stood there, and called again, and got no answer. I then looked aft, and I saw Miller coming down from the poop-deck, on to the main deck, and he came towards me on the starboard side; that was the lee side. He then said, "Captain, why don't you go forward? Glew's leg is broke, and we fear he will die." Said he, "For God's sake do go forward!" Then he was coming towards me, or very nearly towards me. I saw him coming towards me, and I saw he held his right hand behind him, and was going between me and the cabin door.

Q. How far from the cabin door were you? A. About ten feet forward of the cabin door on the starboard side. I said, "Where are the mates?" He said, "I don't know." He then said, "For God's sake do go forward!" I then said, "Go forward and send the mates aft," and stepped quick, and stepped into the cabin past him. He saw me pass into the cabin, and said again, "Why won't you go forward, and help the poor man?" I made him no reply, and then went into the cabin.

Q. Did you see him after that? A. I did not see him for some time.

Q. He was behind you when you saw him? A. I was looking forward and aft, and I saw him come down from there; then I turned round towards him as I saw him coming towards me.

Q. At first he was behind you? A. No, sir; he was on my right.

Q. What direction did he take when he came down from the poop-deck? A. He came almost directly across in front of the house.

Q. How near did he go to the house? A. Within about eight feet of the house.

Q. Did he, at any time, come between you and either of the cabin doors? A. No, sir; as I saw him coming I stepped quick, and stepped past him, and came into the cabin.

Q. How near was he to you when you stepped past him into the cabin door? A. Five or six feet.

Q. Which cabin door do you mean? A. I came out of the port door and went round forward of the mast, and was standing on the starboard side. I went back in the starboard door. I then went into the cabin and called the steward, and found my wife in the forward cabin also. She had gotten up and come forward.

Q. Did you see anything of the steward? A. I called him and he came.

Q. Did you see anything of him after he came? A. Yes, sir; I did.

Q. Did you give him any orders? A. Yes, sir.

Q. What did he do? A. I went into the cabin and got my revolver. When I came out the steward went forward to look for the mate.

Q. What did you do? A. Followed a short distance behind him.

Q. How far forward did the steward go? A. He went forward to the forward house.

Q. What part of the forward house? A. He went forward to the after part of the forward house.

Q. How near did you go to him? A. I went nearly to the mainmast.

Q. Did you hear anything that was said between him and any one else? A. I did.

Q. Did you see anybody besides the steward? A. No, sir.

Q. You may state what you overheard. A. I heard some one ask the steward to come forward.

Q. Could you recognize the voice? A. No, sir; I did not.

Q. Can you give the words? A. They asked him why he didn't go forward and help the poor man, or something like that. I didn't understand it clearly.

Q. Did you hear anything else said by either the steward or any of the parties you didn't see? A. I heard the steward say something.

Q. What was it? A. He said, "You don't fool me." I said, "Don't you go."

Q. How loud did you say that? A. Loud enough for him to hear me.

Q. (*by the Court*). How loud did you speak? A. Louder than I am speaking here.

Q. What was the distance between you and the person he was talking with, as well as you could judge of the position of the person? A. I should say forty feet.

Q. Which way was the wind blowing,— from you towards this person, or the other way? A. Across, between us.

Q. Was this a noisy night, so far as the wind and sea was concerned, or a still night? A. No, sir; a very still night.

Q. What did you do next? A. I called for the boy.

Q. Did the boy come? A. No, sir; I got no answer; could hear nothing from him.

Q. What did the steward do and what did you do? A. The steward came aft and went into the cabin.

Q. What time was that, if you know? A. About twelve o'clock.

Q. Did you look at the clock? A. I don't think I did, at that time. I then called for the mates again, and got no answer.

Q. Where were you standing? A. In the cabin door.

Q. Which door? A. The starboard door.

Q. What did you say when you called for the mates? A. I said, "Mr. Patterson!"

Q. How did you speak? A. As loud as I could call, several times. I got no answer from any one.

Q. Could you see any one in the front part of the vessel at that time? A. No, sir.

Q. What next? A. I then examined my revolver and saw she was all right. I thought there was trouble, and I fired my revolver to see that she was all right.

Q. What was your revolver? A. A common navy revolver.

Q. Five or six barrels? A. Six. I kept watch to see if I could see anything of the men or of the mates.

Q. Where did you look from? A. All round the decks, wherever I could see forward and on each side.

Q. How far forward did you go to look? A. Backward and forward to the main hatch.

Q. The main hatch is how far forward of the after house? A. About ten feet.

Q. Did you find anything? A. I could find nothing.

Q. Is that your revolver? A. Yes, sir. I then went and spoke to the man at the wheel.

Q. Did you go to bed that night? **A.** No, sir; I did not. I kept watch all that night.

Q. Did you see anybody or anything? **A.** No, sir; no one, until towards daylight. Towards daylight I could see the men. I saw Smith and Miller and Glew watching us aft. They were in front of the forward house.

Q. Did you see anybody else there? **A.** No, sir.

Q. During the night, did you do anything to defend the cabin, — barricade it or anything? **A.** I only closed the doors; kept the doors closed when there was no one outside, — when there was no one forward.

Q. What did the others do in your presence, either your wife or the steward? **A.** We kept a watch.

Q. From what place? **A.** From the windows in the mates' room — the mates' room windows on each side — until about five o'clock. About that time I heard some one aft in the lazaret. I heard a noise, and I went and asked who was there.

Q. Whether you made an opening into the lazaret? **A.** After a time I opened the door going into the lazaret, and found the boy, Henry, there.

Q. In what condition? **A.** He seemed to be all right.

Q. No ropes or anything of that kind about him? **A.** No, sir.

Q. That was about what time? **A.** In the morning, about five o'clock.

Q. Had you any other firearms except the revolver? **A.** I had a double-barreled gun.

Q. What was the condition of it? **A.** It was full of water that night, or partly full. During the night I cleaned it, drew the charges and dried it and loaded it.

Q. Did you fire any during the night? **A.** No, sir; only once.

Q. In what direction did you fire? **A.** In the air.

[Adjourned to Thursday, Sept. 23, at 9.30.]

THURSDAY, Sept. 23, 1875.

Q. You testified you found the boy, Henry, in the lazaret. What next occurred after you found the boy? **A.** We waited until daylight, about half-past five. After the boy came up I sent the steward down where the boy came from, between decks. He remained there some ten or fifteen minutes, and came back.

Q. Did he say anything? **A.** Yes, sir.

Q. What occurred next? **A.** We then went and sounded

the pumps, the steward and I. We found no more water than we expected in the vessel. We found about eighteen to twenty-two inches.

Q. During the night before, do you recollect whether anything was done with the sails, or any of them? A. No, sir; there was nothing done, except some of the halyards were let loose.

Q. What would be the effect of that? A. It would relieve the top-mast.

Q. What effect on the sail? A. It would partially take in the top-sail.

Q. What was next done? A. We went to the pumps, and pumped the vessel out.

Q. Did the steward have a revolver at that time? A. Yes, sir.

Q. When did he get his revolver? A. About half an hour before that.

Q. Where? A. In the galley.

Q. Did you see him get it? A. I saw him go into the galley without it, and come out with it in his hand. I sent him for it.

Q. Have you ever seen that revolver before? A. Yes, sir.

Q. As I understand you, the steward did not go to the galley to get the pistol until between five and six in the morning? A. As soon as it was sufficiently daylight, so we could see there was no danger to go to the galley, the steward's revolver being in the galley, I told him to go and get it.

Q. Is that the time when he got the pistol, as soon as it was sufficient daylight? A. Yes, sir.

Q. What time was that? A. Between five and six o'clock.

Q. Will you state the circumstances of the steward's getting that revolver? What did you do, and what did he do? A. The steward went to the galley and I went close behind him. He unlocked his galley and went into the galley, and was inside about a minute and came out again with that revolver in his hand, and locked the door and came to where I was standing.

Q. Did you have anything in your hands at the time? A. I had my revolver in my hand at the time.

Q. Did you see either of the defendants at or before that time that morning? A. Yes, sir.

Q. Where were they? A. The forward part of the forward house.

Q. What time in the morning? A. Between five and six o'clock. It got to be daylight so we could see about the deck.

Q. Locate where each of the defendants was. A. I think Glew was looking round the port side of the forward house, and Miller was looking round the starboard side, and Smith was watching us over the top of the house.

Q. What was then done? A. Then I called to the men to know where the mates were.

Q. Where were you standing? A. Near the mainmast.

Q. Try to give us your language. A. I saw John Glew, and I called to him and called, "John!" and says to him, "Where are the mates?" but I got no reply. I was on the weather side of the forward house,—the port side.

Q. The weather side continued the same the next day it was the night before? A. Yes, sir.

Q. Where were you? A. Standing by the mainmast, or near it.

Q. Could you see either of these defendants at that time? A. Yes, sir; I could.

Q. Where were they? A. Miller was looking round the starboard side of the house, and Smith was looking over the top of the house. I then called to Smith and said, "Bill! Where are the mates?" He gave me no answer. I spoke loud enough for them to hear me. Then I called to Miller, and asked him where the mates were, repeating the same language, "Where are the mates?" and I got no reply.

Q. What did you call him? A. Sometimes we called him "Miller" and sometimes "George." His name is George Miller.

Q. Do you recollect what you called him? A. I think I said "George."

Q. What answer? A. I got no answer. I then told them, "You are trying to take charge of this vessel; you have got the mates, and have got them secured." I was speaking to all three; they were all within hearing. I told them if they did not release them and did not give them up I would use force to compel them to. They made me no reply. I then went aft and got my revolvers ready,—all I could use.

Q. What revolvers were there you could use? A. There was my revolver and the second mate's and the steward's.

Q. Was the second mate's in order? A. Not perfect; it was so it could be used. I then went forward, and asked them again if they were going to do as I requested. I said, "Are you going to give up the mates? If you do not, I shall use force." I got no answer that time from any of them.

Q. How near were you standing to them at that time? A. Thirty or forty feet.

Q. Where were they each? A. In the same position as before.

Q. How much time had elapsed between that and the time you spoke to them before? A. I should think half an hour. I then went back and watched them a while to see if they would release them.

Q. How long did you wait? A. I waited half an hour.

Q. Where were you? A. I was in the cabin.

Q. What did you do next? A. I saw Glew looking round the port side of the forward house, watching to see if he could see us. I waited about half an hour. That would be from half-past six to seven o'clock. I then saw Glew, and I fired a charge of shot from my double-barreled gun at him.

Q. Where were you. A. In the mate's room in the cabin, firing through the window.

Q. What did he do? A. He stepped back behind the house. I then went forward and called to them again. I called them all three by name. I asked them if they were going to give up the mates, but I got no reply. I then went forward with my revolver, the steward and I.

Q. How far forward? A. To the after part of the forward house.

Q. Where did the steward go? A. He was right alongside of me. We were both on the port side of the vessel.

Q. Was there any person on deck? A. Jacob Limber was at the wheel, and my wife was on deck on the starboard side.

Q. Who had been at the wheel during the night? A. Jacob Linger.

Q. What did you do? A. I saw them looking round the house, and I fired from my revolver.

Q. Who did you see? A. I saw Glew.

Q. How much of his body could you see? A. Just see a small part of his head. He just looked by the house so he could see me.

Q. Did the steward fire? A. I think he did about the same time, or shortly after.

Q. Did you see any one else at the time you fired? A. Yes, sir; I saw Miller looking over the top of the house.

Q. Did you fire more than once? A. When I fired they threw two bottles at us.

Q. Who threw them? A. I think it was Glew and Miller. One of them struck the steward, and the other struck the rail and broke to pieces. I then picked up the bottle that did not break and struck the steward, and went aft and loaded our revolvers again, and went forward:

Q. How long an interval after firing the first time? A. I should say fifteen or twenty minutes.

Q. Had you emptied all the chambers of the revolver?
A. No, sir.

Q. You loaded such as you had emptied? A. Yes, sir; those that would not go we put on a fresh cap, and we went and called to the men again to know if they would give up, but we got no reply from them. I asked them if they were going to give up the mates, if they would release the mates. I said if they would I would put them in irons. I mean, I asked them if they would release the mates and go in irons. I said I should put them in irons. I said, "I want you to release the mates and give up. You have not got charge of the vessel, and you will not get charge of it, and the sooner you give up the better it will be for you."

Q. Was anything said about irons that you recollect? Was any reply made you? A. No, sir; I got no reply from them, and I fired another shot.

Q. At whom? A. I fired at Glew, and fired at Smith over the top of the house.

Q. Did you fire at Miller at that time? A. Not at that time.

Q. Where was Glew at that time? A. Glew was on the port side, on the weather side of the house. When I fired, two of them threw some bottles at us.

Q. Do you know which two? A. Glew threw one; I don't know who threw the other.

Q. What kind of bottles? A. Some were quart and some were pint, some were gin bottles and some whiskey bottles, and some beer bottles, — pints and quarts.

Q. What color? A. Ordinary black bottles. The gin bottles were square.

Q. Where did they strike? A. I think one of them went overboard at that time and the other struck on deck.

Q. Do you know where those bottles were prior to that time? A. They were in the fore-castle. Some of them they kept vinegar in, and some of them were bottles that had been brought aboard and emptied, and were laying there in the fore-castle. They were brought aboard at New Orleans, I think. I don't know where they all came from.

Q. Did the bottles have anything in them when they were thrown? A. There were some, I think, about half full of water, — all of them, I think, — and some of them were full. We kept repeating that for the forenoon, and I cannot state exactly how many times I fired.

Q. How many times did you speak to them during the forenoon? A. I called to them; I spoke to them more than half a dozen times to each one of them.

Q. What reply did any of them make, if any? A. I never heard them reply but once. Smith made a reply once to the steward if he would give him his revolver he would release the mates.

Q. Did the steward make any reply to him that you heard?

A. No, sir.

Q. Did you see that piece of iron through the forenoon?

A. Yes, sir; Miller had it in his hands at different times. I would go near to him, and I saw him raise it and attempt to throw it at me. He took it up this way, and made a motion.

Q. Did he take it in his left hand? A. No, sir; in his right hand.

Q. You are lefthanded? A. Yes, sir. At two or three different times I fired at him, when he would hold this up and try to throw it at me.

Q. Was anything thrown during the forenoon by any of the defendants except bottles? A. Yes, sir; there were pieces of grindstone and pieces of cast-iron.

Q. Where was the grindstone? A. The grindstone was forward, I think, right under the forecastle. It was generally kept under the forecastle.

Q. When was it broken, if you know? A. The first I know of its being broken was that day when they threw some of the pieces at me.

Q. What sized pieces were thrown? A. Quite large pieces.

Q. Do you recognize that as one of the pieces of the grindstone? A. Yes, sir.

Q. How do you know that is one of the pieces? A. I know by the marks on it.

Q. Where did you find it? A. I picked it up off the deck after it was thrown at me, and a number of other pieces. Whenever they would throw anything I would pick them up and carry them aft, so they would not get them to throw again.

Q. Do you know who threw that particular piece? A. No, sir; I do not.

Q. What pieces of iron were thrown? A. A stove in the forecastle, — pieces of cast-iron.

Q. Was there a stove in the forecastle before this time? A. Yes, sir.

Q. Was there a stove afterwards? A. No, sir.

Q. The pieces that were thrown were pieces of cast-iron? A. Yes, sir.

Q. Did you find that grindstone subsequently to this day on the vessel? A. No, sir; I found only the crank.

Q. Could you tell whether those pieces of iron that were thrown formed part of a stove? A. Yes, sir.

Q. Was there any other stove there? A. No, sir, not in that part of the vessel, except the galley stove.

Q. Were you hit during the day? A. Yes, sir.

Q. How many times? A. Two or three times.

Q. With what? A. I was hit once with a bottle.

Q. Whereabouts? A. In the side.

Q. Do you know who threw it? A. No, sir; I do not.

Q. Were you hit with anything else? A. I was hit with a piece of cast-iron in the face, in the jaw.

Q. Do you know who threw it? A. No, sir.

Q. What effect did it have? A. Dislocated my jaw, — broke my jaw in the centre.

Q. Did it bleed? A. Yes, sir.

Q. What do you understand is dislocating a jaw; what do you mean by that? A. Dislocating it would be unjointing it here, I should suppose.

Q. Was that done? A. No, sir; mine was broken here, in the centre, in front.

Q. What time in the day was that? A. I could not give the exact time; somewhere about eleven o'clock. Another time I was struck with a piece of cast-iron on the hand.

Q. Do you know who threw that piece? A. No, sir; when I would raise my revolver to one, another one would throw at me, I could not see. When I would be pointing at one I would get a stone or piece of cast-iron or a bottle from another, and could not see who threw it.

Q. Who, during the forenoon, did you see throw anything? A. I saw all three of them throw at different times. I could see them throw at the steward.

Q. Where was the steward? A. Sometimes he was abreast of me, sometimes in front and sometimes behind me.

Q. Did you ever go on different sides at the same time? A. Very seldom; sometimes we would.

Q. Was the steward hit during the forenoon? A. I think he was, some time about ten or eleven o'clock; it might have been before or after. After we fired a number of times this way — by standing some distance from them — we could not hit them, and then one of us kept a watch while the other went up and fired across the forward part of the house. We had to go right up to the forward corner of the house. They were in front of the house, and we had to go up to the forward corner and pass our hand round with a revolver and fire. We went to the port side and fired across. At one time the steward went up and fired, and said he had hit Glew. After he fired Glew was missing. That was about ten or eleven o'clock. Then I saw Smith take his place; he came to the port side, and Miller kept watch over the top of the house and round the starboard side. I saw Smith standing by this corner of the house and looking aft. I saw Miller standing on this side; sometimes he would be looking aft, round

the side of the house, and sometimes over the top of the house.

Q. On which side did the steward go forward to fire at that time? A. On the port side. When I was standing there Miller threw a piece of stone, like that, at me, and it passed over my head and went overboard. I stooped a little and the stone cleared my head and went over the rail. We then went aft and loaded our revolvers again, and came forward and I went up and fired across the house, the same as the steward had done before. Shortly after that I saw Glew watching round the other side of the house, on the starboard side. When we came forward again they were all three watching us,—all three looking aft round the house. I then called to Smith and said, "Are you going to release the mates and give up before any of you are hurt?" I got no reply. I repeated the same to Miller and the same to Glew, and got no answer. I spoke loud enough for them to hear me plainly. I was about fifteen or twenty feet from them at that time. I then saw Miller with this piece of iron in his hand and tried to get a shot at him over the top of the house, and fired at him. After firing two or three shots I had to leave them; it was coming on night, and I stopped, and went to work taking sails off of the vessel. I took off the main and mizzen topsails and the spanker. The fore-topsail had blown to pieces. That was about one o'clock—between twelve and one—when I took the sails in.

Q. What time did the sail blow to pieces? A. During the night previous. The foresail had blown from the mast, and the fore-boom was adrift from the mast and the sail had blown from the mast, all except on the gaff. After we had taken the sail in I went forward and asked them if they had decided. I called Smith, and asked him if he would release the mates and give up; if they did not I should commence firing on them. He said if we would stop firing he would release the mates.

Q. Whom did he say this to, and when? A. He said it to me, about three o'clock.

Q. Where were the other two then when he answered you? A. They were all three in front of the house, in the forward part of the house.

Q. Was this two o'clock on the afternoon of the first day, or two o'clock on the morning of the second day? A. Two o'clock on the first day.

Q. The 20th? A. The 21st.

Q. What hour do you fix? A. Two to three o'clock. I did not keep much of a run of time on that day. There was no cooking on the vessel; no meals. I said in reply, "If you

don't give them up and release them, and give yourselves up, the shots will come hotter and hotter until you do." To this they made no reply. Some few minutes after we went forward, I went and fired across the front of the house. I saw Smith sitting just in front of the house, — sitting down with a board in front of him. I fired at him by the house, and I saw the board drop. I then retired. I did not stop any time, but went away. When I was going aft there were some pieces of iron and pieces of stone come after us. I did not see who threw them. Then, after I went aft, my wife went forward.

Q. How far did she go? A. She went forward very near to the mainmast.

Q. Did she say anything? A. She did.

Q. Did you hear it? A. Yes, sir.

Q. In what tone of voice did she speak? A. She spoke quite loud. Her face was turned forward towards the men.

Q. How far off were the men from her? A. Thirty or forty feet, — thirty feet, I should say.

Q. Were they in hearing distance? A. Yes, sir.

Q. What did she say? A. She said, "Why won't you release the mates and give up and stop this work? Some of you will get killed if you don't."

Q. Did you hear any reply? A. No, sir. Glew was then on the port side of the house again. I saw Miller looking over the top of the house.

Q. What time in the afternoon was that? A. I think it was between two and three, — a few minutes after I fired at them. I saw Glew reach down in front of him and pick up something. I then spoke to my wife. She then went aft with me. We then loaded our revolvers again, and I went forward on the starboard side of the house and attempted to fire at Miller; and when I did so, he stood with this iron again in his hand, and motioned towards me to throw it. I waited some time with my revolver in my hand pointed towards him. After some minutes I fired. I then went to the port side again and fired on the port side.

Q. How far forward did you go at this time when you went on the port side? A. I think abreast of the galley door, — abreast of the after part of the forward house. I think I fired twice there, and then went back and loaded my revolver again. Then we went to work furling the sails and pumping the vessel. The glass was falling at this time, — the barometer, — and I feared there was a gale of wind coming on, and I left them and went to work furling the sails and getting the vessel ready as well as I could for heavy weather. That was about three o'clock. We worked from that time until about four.

Q. Where were your revolvers while you were doing this work? A. We each one had a revolver with us. The steward and I were the only ones that used any fire-arms.

Q. Where was Henry during this day? A. He was at the wheel part of the time. The first part of the day I kept him in the cabin out of sight. I didn't want the men to see him.

Q. Did he do any fighting at all? A. No, sir.

Q. What did Jacob do during that day? A. He was at the wheel a good part of the day.

Q. Did he do any fighting during the day? A. No, sir.

Q. How many times should you think, in all, that you fired your revolver that day? A. I should think that day I fired twenty or twenty-five; perhaps thirty.

Q. Which fired the most, the steward or you? A. I think the steward fired the most, — considerably the most.

Q. Did any of the three defendants, during that day, say anything to you except Smith? A. A number of times they would tell us, — Glew made a remark to me two or three different times: said he, "Fire away! That is one shot less." Smith also made the same remark two or three times, — told us to fire away.

Q. Did you hear anything said by Miller? A. I heard him curse at us a number of times.

Q. Which of the three defendants do you say threw the most missiles? A. Glew threw the most.

Q. How many do you think that Glew threw during the day? A. I should say he threw thirty.

Q. How many should you think Smith threw? A. I should say eighteen or twenty, or about there. Miller threw not more than, I should say, fifteen. Glew was in the most exposed place, and had the best chance to throw. Miller kept more out of the way; so did Smith. Glew would expose himself the most and threw the most.

Q. What time did you cease firing that day? A. About five o'clock in the afternoon.

Q. What time would it become dark, if you recollect? A. About six.

Q. Did you fire any during the night? A. No, sir.

Q. What were you doing? A. We kept watch. All we did was to steer the vessel and keep watch.

Q. Did you sleep during the night? A. No, sir.

Q. Who was at the wheel? A. I might have slept perhaps half an hour.

Q. Who was at the wheel? A. Part of the time Henry and part of the time Jacob. They took their regular turn at the wheel.

Q. What was the weather? A. The wind blew fresh all night, — about northwest.

Q. Did you see anything of either of the defendants during the night? A. Yes, sir; I saw them all the time up to about two o'clock in the morning of the 22d,—Thursday.

Q. Did you see them after that time? A. No, sir; I think not,—after two o'clock. I think it was somewhere between one and two.

Q. Did you see them after that on deck at all until the next day? A. No, sir.

Q. What was done in the morning? A. As soon as it was light we went to the pumps and pumped the vessel. We pumped the vessel during the night. I think at twelve o'clock that night and the next morning at daylight.

Q. How much water was there,—anything unusual? A. No, sir, nothing. After we pumped the vessel I went forward to see if I could see anything of the men, and saw nothing of them. I saw that they had the forehatch secured from the upper deck. There was a chest set on the hatch and a lashing passed from one side to the other over the chest and lashed down. The second mate's chest it was.

Q. Where was the second mate's chest kept prior to that time? A. For about a week before he had kept it under the top-gallant forecastle. His room was wet. I also saw the lashings were all cut off from the boat. The boat was entirely adrift. I mean the lashings were cut. She was laid across the forehatch on deck.

Q. What was the condition of the plug of the boat? A. Some one had put a plug in the boat during the night, and put a rope to her for a painter. I then went forward and saw the door of the forecastle was open. I could see nothing of the men. I then closed the door; the steward was with me. I think I closed the door; I am not sure I did.

Q. Was anybody there but the steward? A. I don't remember of any one. Jacob Limber might have been somewhere near. I think he was not far off; but where he was standing at the time I would not say. The steward took a hammer and nails and nailed the door up. I then got some planks and put over the door, and secured the planks over the door. I then opened the top of the house—the smoke-pipe in the top of the house, the deck iron. I opened that and turned a lot of cold water down through this deck iron, three or four buckets. I then opened the galley and built a fire in the galley and heated some water. After I got some water heated I turned some hot water down in this place.

Q. Whereabouts upon the roof was this opening? A. Down through the centre of the forecastle.

Q. How large an opening? A. A six-inch pipe.

Q. Did you look down through? A. I did, after I turned the water down. I looked to see if the deck was all right. I saw that the deck was all right in the centre of the fore-castle.

Q. Is oil cake combustible? A. It will burn as quick as any oil. It will burn very quick if the fire gets to it. After we got a plenty of hot water I then made some holes through the bulk-head, between the fore-castle and galley. I took an auger and cut the boards off with the auger in different places.

Q. How large openings did you make? A. Three to six inches wide and two to four or six feet long. One place four feet; other places two or three feet. While this water was heating I told the man, Jacob, and the steward to open the hatch and go down.

Q. State what these men did, if they did anything. A. They took off the fore-hatch and went down below, and were gone some ten or fifteen minutes. The fore-hatch is the hatch forward of the foremast.

Q. A large one? A. No; a small one.

Q. Is that the "booby" hatch? A. No, sir; it is the fore-scuttle.

Q. You mean the very forward hatch of all? A. Yes, sir.

Q. Was not that the booby hatch? A. The booby hatch is generally forward of the mizzenmast,—between the mizzen and main. Different rigged vessels have different named hatches.

Q. Which of the hatches was the boat across? A. The fore-hatch.

Q. There are two hatches in front of the forward house, and the boat was across which one,—the one nearest the forward house? A. Yes, sir.

Q. The scuttle was ahead of that,—the one that had the chest on it? A. Yes, sir. They went down and came back, and they made a report to me when they came back. I told the men to go back again, and sent them down forward again. They stayed some time, and came back and reported to me again.

Q. At the time you made these openings between the galley and fore-castle, what was going on inside the fore-castle, if you know? A. I could see nothing inside. When I would cut a hole there would be a bed or clothes-bag or something put up to stop the hole I would cut. After I made some of those holes I asked Miller and Smith and Glew, all three of them separately, if the mates were in there with them. At one time I heard some one say, "Yes." I think he said

"Yes." I could not understand. I heard him say something, and I understood him to say, "Yes," but would not say positively.

Q. Prior to the cutting of the holes, had you said anything to any of those in the fore-castle? A. I called them by name to see if they were in there. I got no reply.

Q. Was any firing done that morning? A. Shortly after they would not answer, I got a number of holes cut, and then the steward fired a number of shots into one of the windows. We opened the two windows.

Q. Did you fire that morning? A. Yes, sir; I fired in through the holes that I cut.

Q. How long did that continue? A. About two hours — to about eleven o'clock — from the time the first shot was fired in there. I got these places cut so I could see all through the fore-castle; but I could see none of them. I was looking for the mates, but could see no one.

Q. Was there any part of the fore-castle you could not see? A. I could not see under the berths. There were boxes and barrels in front of the berths. I could not see under them. I then gave some of the men some hot water, and told them to turn it into the windows. They turned some hot water in the starboard window first, and I saw nothing. Then I had them turn some in the port window. After turning one or two buckets into the port window, I saw some one partially out from under the berth and under the window.

Q. Did you know who it was? A. I was not sure. I said, "Are you going to give up? If you don't I shall fire on you." I got no reply. I could then see this man as he lay, — about half his length.

Q. Which half? A. His legs. I then fired at him, and the steward fired at him at the same time. The boy turned some water in the other side; and I saw Glew on the other side, and I fired at him. I think about that time I heard Miller say, "Stop firing! I will give up." At the same time, as soon as Miller said he would give up, Glew said he would give up. I then told the steward to stop firing; they said they would give up.

Q. Did Smith say anything at that time? A. No, sir; shortly after he said he would give up. I stopped firing, and never fired afterwards. I then went out of the galley and went round to the starboard window, and told them if they would give up to come up to the window and have irons on. Smith came right up and put his hand out of the window, and I put the iron on one hand. I then took a chain and made it fast to the iron, and held him in the window, with one hand out of the window. I then told Miller to come up. I

said, "Miller, come up and have the irons on; come up, and come in irons." He said he could not get up there. I told him he could, and he must come. He said he could not. I told him he must, and he then got up and put his hand out of the window. I put the iron that was on Smith's hand—the other part—on Miller's hand, ironed them together, and drew a chain through the two parts and made them fast. I then told Glew to come up and have the irons on. He said he could not, the same as Miller. I told him he must,—he must have the irons on. Miller and Smith spoke to him, and told him to come up and go in irons. He said he could not get up. I told the steward if he did not come up to look out for him. He then said he would come up and have the irons on, and put his hand out of the window, and I put the irons on him on one hand.

Q. How many sets of iron did you have on the vessel?

A. Two sets. I then said, "Where are the mates?"
[Objected to.]

Q. (by Mr. Hill). What did you mean when you told the steward to look out for Glew? [Objected to.]

Q. Did the steward have a revolver in his hand at that time? A. The steward was on the farther side with a revolver.

Q. In the first place Miller said he could not come up.

A. In the first place Miller said he could not come up.

Q. Then you told him he must? A. Yes, sir.

Q. At last he did come forward? A. Yes, sir.

Q. Did you have a revolver in your hand? A. No, sir; I think not. I think I had put my revolver in my pocket. I was putting the irons on the others.

Q. You told him he must come up? A. Yes, sir.

Q. Where was your revolver when you told Miller he must come up? A. I think it was in my pocket then.

Q. Did you not take hold of it? A. I will not say whether it was in my pocket or whether I laid it down on deck.

Q. Didn't you take hold of it at that time? A. I might have had it in my hand. After I had Smith fast and had irons on him and the chain fast to him, waiting for Miller, I might have taken my revolver.

Q. Then you told him he must come up? A. I told him he must come up.

Q. The steward was on the other side of the fore-castle with a revolver in his hand? A. The steward had been on the other side.

Q. Where was he then? A. Whether he was there after they had all come up—I told him not to fire.

Q. Where was he before they all gave up? A. He was in the galley with me.

Q. With his pistol in his hand? A. Yes, sir. He fired at Miller, and Miller said he would give up.

Q. Didn't he fire after Miller said he would give up? A. No, sir.

Q. Didn't you? A. No, sir.

Q. Didn't you find out afterwards that you fired after they said they would give up,—I don't mean intentionally, but unintentionally? A. No, sir.

Q. Where was the steward at the time you told him to look out for Glew? A. He was on the port side of the house, I think at the window.

Q. With a revolver in his hand? A. Yes, sir.

Q. You spoke loud enough for everybody to hear? A. Yes, sir.

Q. How large is the forecabin? A. Ten by twelve, I should say.

Q. As much as that? A. Eight by ten. I can give you the exact dimensions,—eleven feet athwart ships and nine feet fore and aft.

Q. Didn't you have your revolver ready for use while you were putting on the irons and talking to them just the same as you had before? A. I don't think I had while I was putting the irons on Smith.

Q. When you were putting the irons on anybody didn't you have your revolver ready to use in case of accident, or so you could reach it? A. I had it either in my pocket or on deck. I had it right handy and where I could use it if need be.

Q. You had it where you could get at it pretty soon? A. Yes, sir.

Q. (by Mr. Pillsbury). Did you put up your revolver while you were ironing Miller? A. I will not say whether I put it in my pocket.

Q. Didn't you have it in your hand all the time you were ironing Miller afterwards? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. After you got the irons on Miller you had it again? A. Any time that I was standing doing nothing I always had my revolver in my hand.

Q. After you got the irons on Miller you drew your revolver again and took it in your hand? A. I drew my revolver and told Glew he was playing 'possum.

Q. You told him he was playing 'possum and he must come up to the window, with your revolver in your hand, and he said he could not come? A. He said he could not come.

Q. Then he got up? A. Yes, sir.

Q. Have you given all the language you used to him? A. All the language that I used.

Q. All you said to him was he was playing 'possum and must come up? A. Yes, sir.

Q. He then got up? A. Yes, sir.

Q. And you ironed him? A. Yes, sir.

Q. Hadn't you just before that fired the shot at Glew which struck him in the hips? A. Not after he said he would give up.

Q. At what time was that shot fired? A. While I was in the galley.

Q. That is the shot of which you expected he would die? A. Yes, sir.

Q. That you fired the last thing before you left the galley?

A. That was fired as soon as I saw him under the berth on the other side.

Q. Was it the last shot in the galley? A. It was the last shot I fired.

Q. It was the last shot in the galley just before you went out to iron the men? A. At that time as soon as I fired he said he would give up.

Q. Then Glew was the first to say he would surrender? A. No, sir.

Q. Didn't you say as soon as you fired the shot that struck him in the hips he said he would give up? A. Yes, sir; he spoke for himself. He said when he was shot he would give up.

Q. When you fired the shot that struck Glew in the hips had anybody said he would surrender? A. Miller said he would surrender.

Q. He said so before you fired the shot that struck Glew in the hips? A. Just about the same time; and immediately upon that shot Glew said he would surrender.

Q. Then you left the galley and went out immediately, and put the irons on to the men? A. I gave orders to the steward to fire no more; they had given up.

Q. Was it immediately after you fired the shot that struck Glew in the groin that you went out and put the irons on him? A. As soon as Smith came to the window.

Q. Was that immediately after you fired the shot at Glew?

A. It might have been ten minutes, I should say.

Q. Then the shot fired at Glew was the last shot fired in the galley? A. Yes, sir.

Q. (by Mr. Hill). Didn't you find, after they had surrendered and you went in, that both Miller and Glew were severely wounded? A. Miller was not.

Q. Where was he wounded? A. In the leg.

Q. Severely wounded, was he not? How many shot had he? A. He had three shot in the legs.

Q. Didn't he go into the hospital in London some weeks afterwards? A. Oh, yes, sir; he went into the hospital. He had three shots through his leg.

Q. (by Mr. Sennott). How was it about Smith — was he wounded? How many bullets had he in him, so far as you know? A. I think there were two stopped in him.

Q. There were others that passed by him and one that nearly cut him across the abdomen; didn't he have a severe wound across the abdomen? A. The worst was through the arm.

Q. Didn't he have one in the back? A. One in the shoulder.

Q. Didn't he go to the hospital? A. They all three went.

Q. (by Mr. Sanger). Were you aware at that time how seriously Glew was wounded? [Objected to and excluded.]

Q. I will ask you what the steward said at that time if it was said in the presence of these defendants? A. He was looking into the window, and said he could see Smith. He had a good shot at him. I told him not to fire, they had given up. I said, "Don't you fire on any account," or "Don't you fire." I don't know as I added anything more.

Q. When was this? A. This was after they all said they would give up.

Q. Was it before they had put their hands out of the window? A. Yes, sir.

Q. Where did you get the irons from? A. They were brought to me. I don't remember exactly where they were lying at the time.

Q. Had you them with you, or did you have to send for them? A. I think I sent for them.

* * * * *

Q. You stated that you put the question to these men after they were ironed, "Where are the mates?" Go on with your narrative from that point. A. Miller said, "They are overboard." I said, "Who killed the mate?" Miller said, "I killed him." I said, "Who killed the second mate?"

* * * * *

Q. Give an account of what was said at the time of the surrender, so far as it relates to the mate only. A. I said to Miller, "Did you kill the mate and then throw him overboard?" Miller said, "I struck him on the head with a piece of iron, and he fell on deck, and Smith and Glew —" * * * Miller said, "I struck him over the head with a piece of iron, and he fell on deck, and Smith and Glew came right aft and took hold of him with me, and helped to throw him overboard.

Q. Who was present with you when he made that declara-

tion? *A.* They all three had one arm out through the window. Glew answered, "What is the use for you to say that? I didn't do it." Smith turns to him and says to Glew, "Oh, yes; you want to back out of it now. You are as bad as any of us, and now you are trying to get out of it. We have all got to swing for it, and you might just as well own it as to try to get out of it." Glew made no reply; and when I found out where the mates were, I asked no more questions, but opened the fore-castle doors; then I took them out of the fore-castle one at a time. I took Glew and put him in his berth, and took Miller and Smith out on deck ironed together, and made them fast on the deck together. The vessel then was in a bad state; everything was adrift forward. After I got them well secured I had to take the others and go to work and repair the damages the best I could, and secure the sails and get the vessel into proper order for the night. The night was coming on, and we were short-handed. There was nothing more said for some two hours, I think, or three hours.

Q. About what time should you say this was? *A.* This was about twelve to one o'clock in the day. By the time I had them all secure on deck might have been two o'clock on the 22d. I got two of them secure on deck and Glew secured in his berth. I put the irons on Glew and made him fast with a chain in his berth, so he could not get out of his berth. Then I put chains on Miller and Smith that were not wounded so bad; put chains on their legs, so in case they got their irons off, they would not be at liberty, and kept them ironed together that night.

Q. What was the next conversation you had with any of the prisoners? And state who they were. *A.* After I got the vessel secure and things secure about the deck, I went to the men and told them I wanted to see their wounds and do what I could for them. I asked Miller if I could do anything for him. He said he was cold and would like to be covered up. They were between the fore-scuttle and windlass on deck.

Q. Were they where you had put them two or three hours before? *A.* Yes, sir. Glew was in his berth.

Q. Is the windlass fore or aft of the fore-scuttle? *A.* Forward.

Q. On the fore-castle deck? *A.* Under the fore-castle deck. I took Miller first, and examined his wounds. After I examined his wounds I then covered him up with his blanket. One of the men, or the boy, I think, brought his blanket to him and covered him up. My wife was with me, and she said something.

Q. To one of these defendants? *A.* Yes, sir; to Smith.

Q. If you recollect what it was you may state it. A. She asked him if we could do anything for him. He said, "No; let me lay. I am too wicked." After I covered Miller up I asked him what had tempted him to do such a terrible deed as he had done, and he said, "A wicked mind, Captain, — a wicked mind." Then I asked him whose idea it was to do such a thing. He said all of them. I told him they all could not have the same idea at the same time, and some one must have proposed it first. I asked him who first proposed such a thing. He said Smith.

Q. Who was present when you had this conversation with Miller? A. My wife and Smith. Miller said Smith had been talking about it all the passage, and said such things had been done before and never found out. I then asked Smith how he could plan such a thing, and Smith said it was Miller's work. I then said to him, "Why did you leave the wheel and go and call the other watch out to do such work, — such a crime?" He said he didn't know. I then left them and went aft, and got some bandages and medicine and things to dress their wounds, and came forward to dress their wounds. I finished and got their wounds all dressed, and then I moved them into the fore-castle.

Q. What time in the day was this when you removed them to the fore-castle? A. I think after I got their wounds all dressed and got them into the fore-castle it was nearly dark.

Q. Did you see Glew that day? A. Yes, sir; I dressed his wounds in his berth. I also asked Miller who it was that planned it.

Q. When? A. I don't know whether it was after or before I moved them into the fore-castle I asked Miller who planned it.

Q. Is this another conversation or a repetition of the same? A. No, sir; it is not a repetition of the same.

Q. State anything you have omitted. A. I said to Smith, "Don't you know you signed the official log certifying that if Miller attempted to make any trouble you would come and report it to me?" He said he knew he did. I said, "Why didn't you do as you said you would do when you signed that log-book?" He said he didn't know. There were other questions I asked, but I cannot think of them just now.

Q. When was this last conversation with Smith? A. I don't remember whether it was after I removed them into the fore-castle or before.

Q. Do you recollect anything in reference to Glew? A. I don't remember of having any more conversation with Glew that day. I hadn't much more conversation with any of them. I might have had some, but do not remember just now.

Q. Where did the prisoners pass the night? A. In the fore-castle.

Q. Were they alone? A. Yes, sir; they were alone, except there was a watch kept over them. I was backwards and forwards during the night.

Q. Where were Jacob and the French boy that night? A. They were at the wheel.

Q. Not in the fore-castle? A. They were there occasionally, but not much of the time. They had to steer the vessel. One had to be at the wheel—one or the other—all the time, or nearly all the time.

Q. How did you keep guard over them? A. There was no watch kept over them, except what I kept myself. I went backward and forward every hour, or every half hour, to see they were well fastened and didn't get their irons off.

Q. Was the fore-castle door opened or closed? A. It was open most of the time.

Q. Did anything take place that night in particular? A. No, sir; nothing particular that night. We saw a vessel that night, but could not signalize her. We had no means of signaling in the night.

Q. How far away? A. She passed quite near us,—within half a mile,—so near we could see her sails and rigging quite plain. That was some time during the night of the 23d.

Q. Wednesday night, Thursday night, or Friday night? A. Thursday night.

Q. Which day do you understand to be the 23d, Thursday or Friday,—when does the 23d begin? A. The 23d by sea-time would begin at noon on the 22d. I think it was Thursday night we saw the vessel.

Q. What occurred the next day, if you recollect? A. Nothing, with the exception they complained about their irons,—that their irons were too heavy,—and wanted me to take some of the irons off of them. Smith and Miller complained. I told them I put them on so they would be secure, and I could not take any of the irons off. I was afraid of them, and could not take any of the irons off. They were all the irons I had on the vessel that I could put on them, and I had nothing different, and they would have to be satisfied with them.

Q. Were you able to get your sails spread? A. We got some more sails on the vessel the next day.

Q. When next did you have any talk with the prisoners in relation to this matter? A. On the 24th.

Q. Which day do you mean? A. The 24th, civil time.

Q. What day of the week? A. I think it was on Monday,—might have been on Sunday; but I think it was on Monday.

Q. Whom did you converse with? A. One day was the same as another to us. I cannot remember whether it was Sunday, because we worked at all times. It might have been Monday. I told Miller, and I think the steward was present —

Q. Miller was not with either of the others? A. No, sir. I said to Miller, "I want you to go aft and show me where my brother stood when you killed him, and just how you killed him, and want you to tell me all about it."

Q. (by Mr. Hill). Where was Miller at that time? A. At the pump.

Q. Working? A. He had been working the pump.

Q. Which pump? A. He was standing on the starboard side working the main pump.

Q. Was he ironed? A. Yes, sir.

Q. How? A. He had a pair of handcuffs on his hands, and a chain on his legs.

Q. Was he very lame? A. He was not so lame but what he could walk.

Q. With the chain on? A. He generally took a cane; but he could walk without a cane.

Q. With the chain on his legs he could walk? A. Yes, sir.

Q. Was he chained to the pump? A. He was chained to the pump when I could not be with him.

Q. Did he make any objection when you spoke to him? A. No, sir.

Q. Didn't you have that iron in your hand that has been shown here? A. No, sir.

Q. You are certain of that? A. I had nothing in my hand.

Q. Didn't you have that iron in your hand, holding it up to him at that time? A. No, sir. I told him I wanted him to go aft and stand in the same place that my brother stood when he struck him. He came along aft with me, and when he came aft near the place I told him I wanted him to stand in just the same place and facing the same way he stood when he struck him. He came and stood right near the corner of the mainhatch on the starboard side, — the after corner, a short distance from the mizzenmast, — and I asked him if my brother was standing as he was standing. He said he was. I said, "Where were you at the time?" He said he was in behind the lee side of the after house, pointing on the quarter deck. He said he was hid behind the house.

Q. The lee side was the starboard side? A. Yes, sir.

Q. Whether the place on the poop deck Miller pointed out was the starboard side of the vessel? A. Yes, sir.

Q. Do you mean the lee side on the night of the homicide, or the lee side on the night you were talking? A. On the night he was hid there. He said he was standing looking forward and aft,—first forward and then aft into the cabin.

Q. Who was looking? A. Miller said my brother was, and that he was looking for the second mate. He then came down.

Q. Are you stating Miller's language? A. I am stating what Miller told me at the time. Miller said he then came down from behind the house and came towards my brother, or "towards the mate," he said. He said when the mate saw him coming towards him he said, "What do you want?" He said he then raised the iron, and without answering him, struck him over the head, and he fell on deck; and said that Smith and John then came—

Q. (by Mr. Sennott). Smith was not there? A. No, sir. He said he struck him over the head with the piece of iron, and he fell on deck, and Smith and John came right aft, and they all three took hold of him and chucked him overboard. I said, "Did he make any noise when you struck him?" He said he gave two little grunts, and fell on deck. I then brought this piece of iron out, and asked him if that was the same piece of iron that he struck him with. He said it was. Then I went up to him and raised the iron over his head in that way and said, "Did you strike him that way?" meaning down towards his head. He said, "Yes; that is the way I struck him."

Q. Towards what part of his head? A. Towards the top of his head. I asked him if that was so, and he said, "Yes." I asked if that was the way he struck,—motioning down,—and he said it was. He said, "He had on a cap just like yours." I had on then a cap that was like my brother's. That is the cap I had on at the time.

Q. Do you know whether your brother had one like it? A. Yes, sir; he had. I asked him what clothes my brother had on at the time. He said he had on a big sea-coat and his sea-boots.

Q. Was anything further said at that time that you recollect? A. I asked him if he made any noise after he threw him overboard. He said he did not. I asked him what tempted him to do such a "devilish thing," I expressed it. He said he was dragged into it by Smith. He said he was dragged into it: I asked him by whom. He said, "By Smith." I then asked him why it was that he asked me, when I first left New Orleans, if the vessel was insured. He said some owners did not care what became of their vessel if she was insured, as long as they could get their pay for her.

I then asked him — I said, "Didn't you have that iron behind you when I came on deck, — when you called me out on deck?" He said, "Yes, he had." Said I, "You were going to kill me and throw me overboard the same way you did my brother, were you not?" He said, "Yes." I said, "What were you going to do with the vessel?" He said they were going to steer the same course I had been steering until they got the vessel in near the land; then they were going to scuttle her and leave her in the boat. I asked him if he was a navigator. He said he was not. I asked him if he knew anything about navigation. He said he did not. I said, "What were you going to do with my wife?" He said they were going to put her down the forehold and make her fast, — fast to a stanchion, — and let her sink with the vessel. My wife then asked him why he had planned such a crime. He said he fancied he had been imposed upon. She asked him in what way. He said he fancied he had been growled at. She asked him if he had ever been officer of a vessel. He said he had been second mate of a vessel. I asked him what vessels he had been in. He said he had been in the "Edith," of Yarmouth, and been in the brig "Mary," of Bangor, — Mary something. He said he did not remember the other name. And then a vessel from New York. I have forgotten the name. He said he was in as second mate. I asked him if he was ever in the brig "Mary Celeste." He said "No," and then said he hoped that we would spare his life and take him to the law. I told him I did not want to hurt him; that I should take him where he would get law, and I hoped justice.

Q. Recollect anything further? A. I think there were some other things said, — we talked there a long time, — but I don't remember.

Q. Do you recollect whether the question was asked him whether he had ever been growled at on other vessels?

A. Yes, sir.

Q. State what was said in relation to that. A. My wife asked him if he had never been growled at on other vessels. He said, Yes, he had been growled at a good deal worse on other vessels, and never thought of doing such a thing as that there, and should not at this time if it had not been for Smith.

Q. Was any question asked of him as to when he was an officer what he would do with a man that had acted as he did during the voyage? A. My wife asked him that question, what he should do if he had been on a vessel and a man growled as he had done while he had been on this vessel. He said he should have stopped it if he could.

Q. Had Miller in fact asked you if the vessel was insured?
A. Yes, sir.

Q. When? A. The first day we sailed over the bar,—the time that he attempted to make a noise or some trouble with the mate, and I spoke to him about it.

Q. How far in front of the after cabin was the point that Miller pointed out as the spot of the alleged homicide?

A. It was about eight or ten feet,—might have been a little short of ten feet and might have been a little over,—where he stood at the time.

Q. On the starboard or port? A. On the starboard side.

Q. The after starboard corner of the main hatch, or in that vicinity? A. Yes, sir. I asked him to go to the rail and show me the place where they threw him over the rail. He went to the rail and put his hand on the rail and said they threw him over there.

Q. Whereabouts was that? A. About twelve or fourteen feet from the after house.

Q. On which side? A. On the starboard side.

Q. At the time when he told about throwing the mate overboard, did he state how the different parties took hold of him? A. He said he and Glew took hold of the mate's shoulders, hold of his body, and Smith took hold of his legs.

Q. Recollect as to whether he looked after he was thrown overboard to see what became of him? A. No, sir.

Q. Who were present at this time? A. My wife and the steward. I don't know whether the boy or Jacob were there or not. My wife was there, and the steward was there part of the time; whether he was there all the time or not I could not say.

Q. Did you have any talk with Miller at any subsequent time on the voyage in reference to the death of your brother? A. Yes, sir; I think I had a number of times. I asked him different questions about it. He never made any long statement about it. He never told me the circumstances about it as he did at that time. I asked him a great many questions about it at different times.

Q. Did he ever vary any of the statements he had previously made? A. Yes, sir.

Q. Do you recollect anything he ever said afterwards on this matter? A. At one time I asked him what he intended to do with me when he called me out forward and told me there was a man forward with his leg broken, or Glew had broken his leg. I asked him what he intended to do with me. He said he intended to make me fast and put me down in the forehold. I asked what he intended to do with

my wife. He said he intended to put her down there with me. He said at that time he intended to scuttle the vessel, and let us both sink in the vessel. Then he said he intended to kill me and throw me overboard, the same as he did the mate.

Q. Can you give any idea as to when this last conversation took place? A. The one was the day I dressed their wounds first, when they were forward; and the other was at the time he was there.

Q. Subsequent to the time when he gave this minute description, do you recollect his saying anything? Who were present at the time when he made this statement on the day of the surrender? A. I think my wife was there on both times.

Q. Do you recollect anything further they said about the homicide? A. Sometimes I asked him why they had done such a crime. Two or three times he said it was a wicked mind. Another time he said Smith dragged him into it, — he was dragged into it by Smith.

Q. Did Miller at any time during that voyage state to you when the plan was made, and who were present? A. He did once in the presence of Smith. I think it was at one time they were in the fore-castle. It might have been some six or seven days after the surrender, and might have been more and might have been less. Miller said he got his orders from Smith that night at eight o'clock.

Q. Who were present? A. Smith.

Q. Was your wife present? A. Yes, sir; I think she was.

Q. Where was Glew? A. I think he was there in the fore-castle. I think they were all three there. Smith said it was not so. Miller said to Smith, "Didn't you come and call us, and tell us you had your plans all made, and you were going to do it that night?" and Smith made no reply to that.

Q. What, if anything, did Glew say? A. He told two or three different stories about it.

Q. At that time? A. I think he said nothing.

Q. How near was he to the party speaking, — Miller? A. About six feet, I should say, perhaps less.

Q. Was anything said to you by Miller as to what the plan was in the beginning at that time? A. No, sir.

Q. Did he at any time state what the plan was in the beginning? A. At one time he told what the plans were when they were ironed.

Q. Did he ever say anything in addition to what you have already said? A. I had so much conversation with them and so many times during the sixteen days they were aboard of the

vessel in irons that I cannot remember all that they said. I remember a great part.

Q. Whether you had any other conversation in respect to the plan other than that he gave at the side of the vessel when you called him aft? I refer to the original plan. Whether Miller ever made any statement to you as to any plan prior to the homicide, before the homicide? A. He never reported to me that any such thing was going to be done.

Q. Whether after the homicide Miller ever stated to you what plan he or anybody had before the homicide; that is, as to what they intended to do originally? A. He said a number of times that he intended to kill all of us. Miller said when he was there behind the house when I came on deck that Glew and Smith were forward. He said one of them was standing behind the mainmast and one of them behind the house. He said they were standing there each of them with a capstan-bar in his hand.

Q. Whether Miller at any time subsequent to the alleged homicide stated to you what the plans were before the homicide, and when it was formed? A. He said they had plans, but it was in the forecastle.

Q. When? A. I think it was five or six days after the murder. I think Smith and Glew were both present. I cannot repeat the conversation now. The substance was that they all made it up that night, — that the plan was made that night between the three of them at eight o'clock.

Q. Did he state what the plan was? A. He did, but I cannot state it now.

Q. (*by Mr. Cummings*). Did you ever have any talk with Smith in regard to this matter at the time Miller said the plan was made at eight o'clock? Did Smith or Glew make any remark? A. No, sir; they made no objections to it at the time.

Q. Subsequent to the surrender, did you ever have or hear any talk on the part of Smith in reference to the death of the mate? A. Yes, sir; I heard Smith tell how he was thrown overboard.

Q. What did he say about it? A. I asked him — my wife asked him in my presence — how it was, and he told her.

Q. (*by Mr. Sennott*). You have sworn you were there yourself. A. Yes, sir; I was there, but I didn't ask the question.

Q. What question did she ask? A. She asked Smith what part of the body Glew took hold of. He said he took hold of the foot, I think.

Q. Was anything further said at that time? A. I will

correct what I said before. He said Glew took hold of the shoulders and he took hold of the foot, I think.

Q. Do you feel certain? A. Yes, sir; I am quite certain that was the way.

Q. Who was present at that time? A. They were all three in the fore-castle at this time, and I had a talk with Glew at other times.

Q. How long was this after the surrender? (*Clifford, J.*). He stated that it was five or six days. A. (*Witness*). Not the conversation I had with Glew.

Q. (*by Mr. Cummings*). When was it, after the surrender, that Smith made this statement in reference as to how they took hold of the mate? A. I think that was eight or nine days after,—perhaps ten, and it might have been fourteen days after.

Q. How near together were the three prisoners when Smith said this? A. They were all three in the fore-castle together, not more than six or eight feet apart.

Q. Who took part in that conversation? A. I took some part in it, but not much. My wife was talking with me.

Q. Who was she talking with? A. My wife and Smith.

Q. At that time was anything else said by anybody there present? A. Yes, sir; I remember of asking Miller why it was that he done it at that time; but the answer was so much like former answers that I don't remember what questions I did ask.

Q. Did Glew say anything?

Q. (*by Mr. Field*). Glew was in the fore-castle all the time from his surrender up to the time you got to London? A. Yes, sir.

Q. Confined there by his wounds? A. Yes, sir.

Q. And a large part of the time was expected to die from day to day? A. I supposed from the state of his wound that he might die at any time.

Q. What was the state of it? A. I supposed that the ball when it went in here in his side took a forward course; but I afterwards learned that it took a back course and lodged in his back, instead of going through, as I supposed it did; therefore I was deceived as to his condition. He was in great pain.

Q. And was unable to stand up all the time, wasn't he? A. At first, I think, he was unable to stand up.

Q. Lying in his bunk, suffering pain all the time? A. No, sir; not all the time. When he was moved he suffered pain.

Q. Were there any days before you got to London that, so far as you could judge, you thought he would die? A. I thought he would, and I thought that mortification might take him any time.

Q. From such appearances that you observed? A. By the way he represented his case to me; but I found he represented it altogether different from what it was.

Q. Were there any days you expected he would die before he got to London? A. I thought that he would.

Q. How many days? A. At the time he was shot,—a person in his condition,—I never saw one before,—from what I had heard, I thought he couldn't live over nine days. I thought when the nine days were passed he might die any day.

Q. When he got to London, didn't you tell the magistrate there that you thought he would die immediately? [*Objected to.*]

Q. Did that condition of Glew, so far as you can judge, continue from the time he was shot until the vessel got to London? A. That was my opinion; but when I got to London and had a physician examine him he told me I was wrong.

Q. (*by Mr. Cummings*). You may go on now and state anything that was said by Glew at that time. A. I asked Glew where he was at the time that I was called out in the night, the time that Miller called me. At this time he said that he was standing forward by the after part of the forward house. I asked him if he had anything in his hand, and he said he had a capstan-bar in hand. I asked him where Smith was at that time when he came on deck. He said Smith was standing behind the mainmast. I asked him if he had a capstan-bar, and he said that he had; and I then asked him whether he really did help throw the mate overboard or not. He said that he did. I asked him what he intended to do with that capstan-bar when he was standing there. I think he made me no reply. I don't remember what his reply was. I remember my wife asked him. I didn't ask him any more questions, not at that time; one or two days before, my wife asked him a number of questions.

Q. You may state what they were. A. All that memorandum was made of them, and I couldn't state the whole of them without I saw that to refresh my memory.

Q. Is your memorandum here? A. Yes, sir. [*Memorandum handed to witness.*]

[*Mr. Field objected, and contended that the counsel for the defendants had a right to see the memorandum before it was put into the witness's hands, and to inquire as to who made it, and as to where and when it was made.*]

[*Clifford, J. We think, under the circumstances, without making any general ruling, that we will allow the counsel to see the paper and to inquire when it was made and who made it.*]

[*Witness examined the memorandum and handed a portion to Mr. Field.*]

[*Mr. Field. I would like to show this paper to the Court before I make any examination. Paper handed to the Court.*]

[*Clifford, J. (after reading paper). Well, sir?*]

Q. (by Mr. Field). In whose handwriting is this paper?
A. My wife's.

Q. When was it written? *A. It was written at the time, — the same day that he made it.*

Q. When was it written, if you know? *A. I can't tell the exact date. I think it was about, — it might have been somewhere near the 30th of April, either the 28th or the 30th.*

Q. Where was it written? *A. It was written on the vessel at that time.*

Q. Where was it written? *A. I think it was written in the fore-castle; I won't say for certain.*

Q. Were you present when it was written? *A. Yes, sir; I was.*

Q. Can't you tell me, then, where it was written? *A. It was written in the fore-castle.*

Q. Do you remember where it was written? *A. I know that one was written in the fore-castle at that time, and I think that is the one.*

Q. Do you remember where this paper was written? *A. I think it was written in the fore-castle.*

Q. How many papers were written in the fore-castle? *A. Only one, to my knowledge.*

Q. What makes you think this paper was written in the fore-castle the 30th of April? *A. Because I don't know of any others that were written.*

Q. Is that the only reason you can give? *A. I never marked the paper that I should know it again.*

Q. In whose possession has this paper been? *A. It has been among other of the vessel's papers.*

Q. Where did you next see the paper that was written in the fore-castle, if any was written? Who took it away, — any other one besides that, — any paper written in the fore-castle?

A. I don't know that I saw any other besides that.

Q. If you saw this, where was it taken from the fore-castle?
A. Taken in the cabin.

Q. Who took it? *A. My wife.*

Q. Where did you next see it after it was taken from the fore-castle by your wife? *A. I think I saw it in London; in London, the next time that I saw it, I think.*

Q. When next? *A. I think I saw it in New York.*

Q. When next? *A. I think I saw it here in Boston; had it in my possession for something over a week. That is a paper that has been with other papers of mine.*

Q. Under what circumstances was that paper written down, so far as you heard and saw? A. On this day my wife went to the forecandle with me, and asked Glew if she should write for him, if he would like for her to read him a chapter in the Bible.

Q. I am not asking the conversation at all. Were you there all the time? A. Yes, sir.

Q. Did you take down yourself any memorandum of it,—anything that Glew said? A. No, sir.

Q. Was any memorandum taken down of anything that was said to him? A. No, sir.

Q. Was any memorandum of the conversation between your wife and Glew, or you to Glew, as it occurred, taken down by anybody at that time? A. No, sir.

Q. And this paper isn't a memorandum of the conversation between you or your wife and Glew as it occurred at that time? A. It is not the conversation; no, sir.

Q. Are the words in that paper taken, every one of them, from Glew's lips? A. It was written down as he dictated.

Q. Do you mean to swear that the exact words were taken down? A. No, sir; not the exact words.

Q. Then that don't purport to be the words which Glew said,—to give his words? A. No, sir; I wanted it to refresh my memory so as I could bring to mind the exact words that he did say.

Q. It isn't a memorandum that you made yourself? A. No, sir; my wife made it. I wanted it to refresh my memory so as to bring to mind what he did say.

Q. (by the Court). Made in your presence? A. Made in my presence; and by referring to that I could give the substance of what was said at that time. Without it I couldn't give all that was said; I could only give part of the conversation.

[Mr. Field. It doesn't purport, your Honor, to be a memorandum of the conversation at all. The witness expressly swears it doesn't take down the conversation.]

Q. (by Mr. Cummings). Will you state what took place before this was written, in order that we may understand the circumstances under which it was written? A. I told my wife—

Q. Was anything said to Glew before this was written? A. Yes, sir; my wife asked him if she should,—said to him that she didn't think that he would live long, and asked him if she should read a chapter in the Bible, and he said that she might. She then read a chapter of the Bible to him, and then she asked him if he had any word that he wanted to send to his folks,—parents. She asked him where they

were, and he told her, and asked him if he had any word that he wanted to send to them; if he did, that she would write to them when we arrived in London. He said that he had no word to send to his folks; he didn't want them to know anything about him, where he was. She asked him if he wanted to make any statement in reference to the case, and he said that he did. She asked him a number of questions.

Q. (by Mr. Pillsbury). Won't you state the exact words that passed between him and your wife, if you can? A. I can't state the exact words.

Q. (by Mr. Cummings). State the substance, if you can. A. The substance of it was that he was informed that they was a going to do this work on that night, — the night of the 20th. He was first informed of it about eight o'clock that night. It was made up between them to do this. My wife asked him if he helped to throw the mate overboard, and he said at that time that he didn't. She asked him how he came to join them, and he said they told him if he didn't assist them that they would serve him as all the rest; that they would kill him was the substance of it.

Q. Do you recollect anything else? A. I don't remember anything more now at present. [*The Court at this point retired, and on returning, ruled that, in their view of the matter, the paper put in was not one which ought to be used by the witness to refresh his memory, as it did not purport to be a memorandum of the conversation made at the time.*]

Q. (by Mr. Cummings). Do you remember anything else that Glew said in that conversation besides what you have already stated? A. He said considerable, but I can't call it to mind now. I heard him state at two different times, — stated it different ways. At one time I heard him say he knew it at eight o'clock, and another time I heard him say that he didn't know until he was called out of his berth.

Q. At what hour? A. It was between ten and eleven he was called out of his berth by Smith. He said that at the time Smith called him that he knew of it. Smith called him and Miller, and told them that his plans were all laid, and that he had decided to do it that night.

Q. To do what that night? A. At another time he said he knew it at eight o'clock. He and Smith and Miller talked it over at eight o'clock and the plan to do it on that night.

Q. Were any questions asked him at the time? A. He was asked why he didn't come aft and report it at that time. He said he didn't know what the reason was that he didn't, but he was sorry now that he didn't do it.

Q. When he said it was planned at eight o'clock was that in answer to any question? A. I think it was a question from my wife.

Q. What was that question? A. I can't state it now.

Q. (by Mr. Cummings). Will you try to use the language of Glew at the time you stated he said he planned it at eight o'clock; now, will you try to repeat his language? A. It was a question of my wife. I remember his answer every time, but I can't give the substance of her words.

Q. Can you state the language of Glew more definitely? A. I can't than I did the first time that I stated it.

Q. Did Glew state what the plan was at eight o'clock? A. I can't say exactly; I can't be certain.

Q. Did you have a talk with Glew, at any time during the voyage subsequently to the surrender, in reference to this matter, that you have not already testified to? A. Yes, sir; there was a number of conversations with all of them, but I can't call any to mind now.

Q. Give all the facts, date, as near as you can, when he admitted to you that he did help to throw the mate overboard? [Mr. Field objected.]

Q. When, to the best of your recollection, was that particular conversation when Glew made this statement that he assisted in throwing the mate overboard? A. I think it was about ten days after; it was either one or two days after that he made that statement, I won't say which,—the conversation that I had with him in the fore-castle.

Q. Will you state all the conversation that occurred before he told you this, if anything? [Objected to.]

Q. (by the Court). Now the question is whether you had any prior conversation with him after the death. A. Yes, sir; I had a conversation after this time,—after he admitted this.

Q. (by Mr. Cummings). Before that? A. Yes, sir.

Q. What was that? I mean on the same day. I mean whether anything was said which led to this statement of his.

Q. (by the Court). State any conversation that you had with him on the same day before that. A. I had some conversation with him as to his condition, how he felt. I asked him how he was, how he felt; he was in pain; where his pain was; and he said that he wasn't in near as much pain that day as he was the day before; he was much easier.

Q. (by Mr. Cummings). Did you have any conversation with him at that time as to whether he was likely to live or not, and if so, what? A. I told him that I thought that he wasn't likely to live; that I thought that his symptoms were bad; and as the pain was leaving him, that he was likely to

die at any time. I told him that mortification was taking place, and that he couldn't live. I asked him if he wanted to make any confession or tell anything about this trouble.

Q. What did he say? A. He said that he would like to.

Q. What did he say? A. I can't repeat it; because I want to, I can't.

Q. Can you give the substance of it? A. I can't now; the more I think of it, the less I can think of it.

Q. What is this for [*producing a bar of wood*]? A. A capstan-bar.

Q. Where did that particular capstan-bar come from? A. From the "Jefferson Borden."

Q. What is a capstan-bar used for? A. To turn the capstan for raising heavy weights or moving the vessel.

Q. Where is the capstan? A. On the forecastle deck.

Q. How many capstan-bars were there then in your vessel? A. Supposed to be six. We had four or five at that time; some of them are lost.

Q. Where were they kept? A. Kept alongside the fore-castle, forward on the forecastle deck.

Q. What kind of wood are they made of? A. These are made of hard pine.

Q. Are they all of the same material? A. Yes, sir.

Q. How did they compare in size? A. They are very nearly the same size; some a little shorter and some a little longer than others.

Q. How were they at that time? A. That was the ordinary length of bar we had on the vessel at that time.

Q. Was this bar on the vessel at that time? A. Yes, sir.

Q. Captain, did you ever see that before [*producing a piece of rope*]? A. Yes, sir.

Q. Where did you ever see it? A. I saw it on the vessel. It is a piece of rope that formed a part of the outer jib sheet.

Q. How can you identify that? A. By the size and shape of the rope, and by the knot at both ends. [*Objected to.*]

Q. Where did that come from? A. It is a piece of rope that I cut out of the outer jib sheet.

Q. When did you do that? A. Some eight or ten days after the 25th or 28th of April.

Q. Where has it been since that time? A. It has been in my possession. I brought it here to the Court room.

Q. What part of the outer jib sheet did that come from? A. It came from the starboard sheet, out of the centre of the starboard sheet.

Q. Will you point it out on the picture? A. [*Witness pointed it out.*]

Q. In what part of the outer jib did you cut out this knot?

A. I cut out this knot about four or five feet from the standing part of the outer jib sheet.

Q. Whereabout is the standing part of the outer jib sheet?

A. The standing part makes fast on the rail near the after part of the forecastle deck; the falling part is made fast to a point in the after part of the deck.

Q. What was the condition of that outer jib sheet on the 20th of April? A. It was good to my knowledge. I had it rove off some fifteen or twenty days before,—rove off in place of another that was poorer rope. It was put in the place of a poorer one. This was a good one.

Q. Was there such a knot as that in it? A. No, sir; not at the time it was put in.

Q. When did you last see it before the 20th of April?

A. I saw it on that day; every day,—about every day.

Q. Did you examine the rigging? A. Yes, sir; I always examined the rigging every day on the voyage,—the different parts. If anything is gone about it I am very likely to see it before it is gone a great while.

Q. When did you first see the knot in the outer jib sheet?

A. I first saw it on the 23d, I think it was.

Q. Had you noticed the outer jib sheet between the 20th and that day, that you recollect? A. I noticed the sail, but I did not notice the knot in it until the 23d. I noticed the rope on the 22d. I saw the sail, when I went below the 20th, was set. When I came on deck at twelve o'clock at night of the 20th, the sail was down and blowing adrift for thirty-six hours afterward till we could get forward and secure the sail.

Q. When did you find that knot there? A. I found that the second day after.

Q. Was that the time you were attempting to secure the sail? A. Yes, sir.

Q. How high up from the deck was the knot? A. About as high as a man stands.

Q. Have you ever known an outer jib sheet to part? [Objected to.]

Q. How much strain is there on a sheet of that kind?

A. At times there is a weight, I should say, of half a ton; at other times not an hundred weight.

Q. Was the wind heavy on this night? A. No, sir; the wind was light.

Q. Have you had experience in the parting of ropes,—in the appearance of them afterwards? A. Yes, sir.

Q. (by Mr. Field). When did you cut that knot out?

A. I cut it out about the 27th,—either the 26th or 27th,—about six days after, some four days after I discovered that there was a knot in it.

Q. What cut on that rope was made by you? A. I cut those ends off. The knot was made in the rope. I cut the knot out and knotted it afresh.

Q. You stated you have had experience in ropes parting on a vessel. When a rope parts, how are the ends? A. Sometimes one strand of a rope will part nearly off a fathom before another strand will part; and when a strand goes, the other three will hold the weight for some considerable time. Sometimes they will all part together.

Q. When a rope parts all together how are the ends left? A. There are always some of the yarns not equal in strength; some will pull more than others, and some will pull in one way and some the other.

Q. How will the different yarns be left as to length? A. They will be very uneven.

Q. Did you ever know of a rope parting on a vessel and leaving the ends as even as that? [*Objected to.*]

Q. What do you say, as an expert, as to the manner in which that rope parted? [*Objected to.*]

Q. (*by the Court*). Does your experience and knowledge enable you to judge better about this matter involved in this question? A. Yes, sir; it is something we have to do with every day.

Q. You may answer, Captain, as to how that was parted. A. I should say it was cut.

Q. What is your reason? A. The ends of that yarn are cut so even.

Q. Explain to the Court and jury. A. The ends are all even as though it was cut by a knife; none of the yarns are drawn out longer than the others.

Q. What do you know about that knot? A. I know that I cut it out of the jib sheet a few days after.

Q. Is it in the same condition now that it was at that time? A. The same condition as it was when I cut it out.

Q. Have you ever said anything to either of the defendants in reference to that knot, or showed it to them? A. Yes, sir; I did show it to them.

Q. To whom? A. I showed it to Smith.

Q. State what occurred. A. I showed it to Smith, and asked him if he didn't cut that sheet.

Q. (*by Mr. Sennott*). Where was Smith when you asked him? A. He was at the pump.

Q. Was he in chains? A. He had his irons and the chains that I always kept on him.

Q. What day did you show it to him after the transaction that took place on the 20th? A. The same day that I cut it out.

Q. The 27th, or thereabouts? A. Thereabouts. I would not say just what day it was. I did cut it out.

Q. (*by the Court*). About what time? A. Somewhere about from the 25th to the 28th; about four or five days after I discovered it. * * *

Q. Captain, will you identify that piece of stone? A. These are pieces of stone that were thrown at us, — thrown at the steward and I during the first day.

Q. What do you mean by the first day, — what day of the month? A. The 21st day of April, — Wednesday.

(*By Mr. Cummings.*) That would be Wednesday; Wednesday was the first day of the mutiny.

Q. Where did you find that piece of stone? A. I picked them up on deck after they were thrown at us.

Q. Where have they been since that time? A. I have had charge of them, — had them ever since.

Q. And that piece of leather, have you ever seen that before? A. That piece of leather is the revolver case. I think it is the same one that Glew had pointing round the corner of the house.

Q. The day of the mutiny? A. Yes, sir; during that day.

Q. (*by the Court*). They pointed the case at you? A. They pointed the case at me.

(*By the Court.*) That would hardly be an assault, as there was no pistol.

Q. (*by Mr. Sennott*). Captain, in your testimony this morning you said that on Wednesday forenoon, when you were describing the transaction, the foretopsail had blown to pieces, so that you had to rest during a portion of the conflict to take care of the vessel. What was the condition of the vessel on the night of the 20th, between twelve and one o'clock? A. It was on Wednesday the foretopsail blew to pieces.

Q. Was there any damage done to the sails by the weather, to your knowledge, on Tuesday night? A. No, sir; there was none.

Q. When was it that the wind freshened? A. On Wednesday afternoon or Wednesday night.

Q. When did you repair the damages that were done to the sails on Wednesday night? A. We didn't repair the damages that were done to them that afternoon until Thursday afternoon.

Q. After the surrender? A. After the surrender.

Q. (*by the Court*). You stated that on one occasion a vessel was within half a mile: will you state what day or night it was? A. It was on the night of the 22d; I think in the night time.

Q. State whether or not you had colors. A. We had colors ; but she was so far away that she would not be likely to see those colors.

Q. It would not answer in the night ? A. No, sir.

Q. What were your colors ? A. They had no bars on them, but were ordinary colors, ensign and jack.

Q. What kind of a flag was it ? A. The American flag.

Cross Examination.

This witness was cross-examined by Mr. Hill at considerable length upon the following subjects, namely: his pecuniary interest in the "Jefferson Borden" and her cargo; the condition of the vessel as to seaworthiness, as to her equipment and as to her being sufficiently manned or not; the insurance on the vessel and cargo; the amount of labor required of the men; the demand of the crew for watch and watch; the treatment of Miller at the time he was put in irons before the mutiny; the complaints of the crew about the provisions furnished them; the fire-arms in possession of the officers, and the means of knowledge concerning them possessed by the crew; the treatment of the prisoners at the time of and subsequently to their surrender; and the statements of the witness before the magistrate in London.

This witness was also cross-examined by Mr. Field upon the following subjects, namely: the part taken by the prisoners respectively after the mutiny had broken out; the conversations had with Glew in reference to the transactions of the night of the 20th of April; the manner of securing the prisoners after their surrender; the methods resorted to to induce or extort confessions from the prisoners; the conversations had between the witness and his wife and others, and the effect of these conversations upon his own present recollection of the details of the mutiny; the memorandum made by him of the events from time to time as they occurred; his condition of excitement at the time, and its effect upon his understanding and recollection of what actually happened.

In the course of the cross-examination of this witness by Mr. Field, the following testimony relating to the confessions of the prisoner, Glew, was given:—

FRIDAY, Sept. 24, 1875.

Q. You have stated all the conversation you had with Glew, haven't you, in the examination by the Government?

A. Not all.

Q. Now come to the interview you had with him a day or two after you say your wife made that memorandum. You had had several conversations with Glew before? A. Yes, sir; a great many.

Q. He denied it, didn't he? A. Most always he denied it. When he was alone he was always denying it.

Q. The conversation which you had with him a day or two after your wife's memorandum, how did you introduce it? I want the words you said. A. I can't give the exact words.

* * * * *

Q. Who was present? A. Smith and Miller.

* * * * *

Q. Wasn't there anything in that conversation that attracted your attention particularly? A. There were some things.

* * * * *

Q. Now this particular conversation you swore to in regard to Glew, a day or two after the memorandum was made, you regarded as an important conversation in one or two particulars; am I right? A. I said there was one or two important things.

Q. Don't you know whether you were alone with them? A. No, sir.

Q. What was the first word you said to Glew? A. I can't swear to the first words. I think they were whether he did or did not help to throw the mate overboard.

Q. How long was the conversation with Glew? A. Not over five or ten minutes.

Q. With all of them, or with Glew alone? A. With all. I had some conversation with all of them.

Q. How long was your special conversation with Glew, if you remember? A. I don't think I asked him more than three or four questions; then I went away.

Q. How long was that before you got to London? A. I can't give the exact time; some time, but how long, I can't tell; might have been a week; might have been less.

Q. Whom did you first tell this particular conversation you had with Glew to? A. That is more than I can tell.

Q. When did you first tell it? A. I don't think I can tell when.

Q. Did you tell it in London to any? A. A great many.

Q. Who? A. The American consul.

Q. Anybody else? A. A great many.

Q. Did you tell it to the magistrate before whom you made the complaint? A. I don't know that I did.

Q. You made no memorandum of it, did you? A. Yes, sir, of what he said.

Q. At the time? A. Yes, sir, of everything, a great many things. I made a short memorandum so as to remember all the things, or a great many of the things.

Q. You made a memorandum of all these men have said from the surrender? A. Of a good many things they have said.

Q. Did you take it with you all the time, making a memorandum of what they said? A. No, sir.

Q. Where did you keep it? A. I kept it in the log-book. When I made up my log I wrote it down, and some in other places.

Q. But not at the time of the conversation in the presence of the person talking? A. Oh, no.

Q. And never wrote out the whole of any one conversation from beginning to end? A. No, sir.

This witness was also cross-examined by Mr. Sennott upon his treatment of the crew of the "Jefferson Borden" during the voyage, previous to the mutiny; the food and water furnished them; the condition of the fore-castle; the extra labors exacted of them; the treatment of the prisoners after the surrender; and the comparison of notes between the witness, his wife, the steward, Jacob Limber, and the boy Henry.

EXAMINATION OF HENRY AIKEN.

Henry Aiken testified that he was cook and steward on board the "Jefferson Borden," upon her last voyage from New Orleans to London, and described at considerable length the events of the night of the 20th of April, 1875. He testified that he retired at about nine o'clock in the evening, and was awakened by hearing some one — Miller, he thought — in the cabin saying that there was a man lying forward with a broken leg; that he rose up out of his bunk, and looking out of his window saw Miller come along and step down from the starboard side of the gangway alongside of the house with his right hand behind him and shaking his fist at him, the witness;

that he grabbed his pants and put them on quickly; that he heard some one call him in the cabin, and heard the captain and Miller talking outside. The examination continued as follows:—

Q. What was said? A. Miller says, "Why don't you go ahead and help that man?" The captain said, "Where are the mates? You go forward and send the mates aft here"; and he commenced singing out for the mates.

Q. What did he say? A. He sang out, "Mr. Patterson!"

Q. How many times? A. Two or three times.

Q. How loud? A. You could hear it all over the ship. Then he came into the cabin. I came out then.

Q. Who came in? A. The captain.

* * * * *

Q. Did the captain say anything to you when you came into the cabin? A. He said that—

Q. Don't say what he said. Did he say something to you, — did he speak to you? A. He asked me—

Q. What did you do? A. I went forward.

Q. Whom did you see? A. I saw Miller and Smith.

Q. Did you see any one else? A. Yes, sir; Glew.

Q. How far did you go forward? A. I went to the house right on the rail; close to the side.

Q. You saw all three? A. Yes, sir.

Q. How far did you go forward? A. I went right abreast of the corner of the house. I went to the forward starboard corner, — to the forward corner of the forward house on the starboard side.

Q. Where were Miller and Smith? A. They were standing right here at the corner of the hatch.

Q. How near to you? A. Three or four feet.

Q. Where did you see Glew? A. Over here; standing here and looking aft, on the port side of the forecastle door.

Q. If anything was said at that time, state what was said. A. I said to them, "Where is your man with the broken leg?"

Q. Did either of them reply? A. Yes, sir.

Q. Which ones? A. I think it was Miller spoke up first and said, "He is lying on the forward part of the boat." Then he told me to go ahead. Then I asked him, said I, "Where are the mates?" After I asked him where the man was with the broken leg, they said on the forward part of the boat. Then I asked him where the mates were. Then Miller spoke up and says, "For God's sake go ahead and help that poor man, won't you?"

Q. What else? A. I says, "No; you don't fool me; you have done something with them."

Q. What next, if anything was said? A. I went right off again.

Q. Did either of the others say anything? A. No, sir; only Miller and Smith was talking; Glew didn't say anything.

Q. Did Smith say anything to you? A. Yes, sir; he was talking, too; but I don't remember exactly what he said.

Q. Then you went aft? A. Yes, sir.

* * * * *

Q. State what was done in the cabin when you were present? A. The captain got his revolver and the gun and he cleaned them out, and went up aft and got a capstan-bar and closed the door and made it fast.

Q. Which door? A. I think the lee door was made fast first.

Q. Did you have any fire-arms on the vessel? A. Yes, sir.

Q. What? A. I had a revolver.

Q. Where was the revolver? A. In the galley.

Q. Where? A. In the starboard side, in the locker.

Q. Did you at any time that night get the revolver? A. Yes, sir.

Q. When? A. Next morning.

Q. About what time? A. About five o'clock,—it was daylight.

* * * * *

Q. Will you describe how you got your revolver? A. I went forward first with an iron bolt again, and asked them where the mates were.

Q. Whom did you ask? A. I asked Miller and Smith. Glew was standing there, just about the same place he was that night.

Q. What did you say? A. I asked them where the mates were.

Q. Was there any reply? A. Yes, sir.

Q. Who replied? A. Smith.

Q. What did Smith say? A. He said the mates were all right.

Q. Was anything more said? A. Yes, sir; he told me I should come forward and he would tell me something.

Q. What next? A. I told him, no, I wouldn't go; I was going into the galley to light the fire, and said, "Leave me alone." Smith says, "Well, steward, you know we won't trouble you." I unlocked the galley door and went in and got the revolver and locked the door again.

Q. Where was the captain? A. He was standing with

the double-barreled gun at the forward part of the main hatch on the starboard side.

Q. Which way was he looking? A. Forward.

Q. What was done next? A. I took the revolver; it had been loaded a long time,—seven or eight months,—and was rusty. I fired one shot.

Q. In what direction did you fire? A. I fired it over-board.

Q. What was done next? A. I went forward then.

Q. How far forward? A. Right abreast, about in the middle of the house.

Q. On which side? A. The port side.

Q. Whom did you see? A. I saw Glew.

Q. Did you fire at anybody in particular? A. No, sir; I went forward and I told them, "You give up the mates," says I, "if you don't we will shoot you."

Q. Whom did you see? A. Glew.

Q. Was there any reply? A. He was standing laughing. He says the mate was all right. I fired, but I didn't fire at him exactly; I fired forward. I thought I would drive him away. He commenced to heave bottles. There were two bottles come; one struck me.

Q. Did you know who threw the bottle that struck you? A. I think it was Glew. I am not sure; but I think it was him.

Q. Were you alone? A. Yes, sir; the captain was on deck, but he was standing back.

Q. What took place next? A. I went back again to the cabin, and then both came out again.

Q. How long did you stay in the cabin that time? A. I didn't stay many minutes. I came back again. We went right forward again and commenced firing again. I tried to hit them, and then I went on the port side and saw Glew and Smith both looking round, and then the other looking round.

Q. Did anybody else fire besides yourself at that time? A. Not the first go-off; a little while after the captain fired a couple of times.

Q. How many times did you fire? A. I could not say.

Q. At that time how many barrels of your revolver? A. Two.

Q. What was said at that time, if anything? A. They didn't say anything.

Q. Did you say anything, or the captain say anything? A. Yes, sir; I sung out, but didn't get any answer.

Q. What was said? A. I asked him if he was going to send the mates aft.

Q. Whom did you say that to? A. To Miller and Smith I was talking to.

Q. Was there any reply? A. No, sir.

Q. How loud did you speak? A. I sung out loud.

Q. How near were you to them? A. Seven or eight feet from them.

Q. What took place? A. We went aft again.

Q. How long did you stay aft? A. We didn't stay very long; we went to pump the vessel out.

* * * * *

Q. Go on and describe what took place after you pumped the vessel. A. We tried to shoot them again at different times.

Q. What did the men do? A. They stayed all the time ready with stones and pieces of iron they had there to throw them.

Q. Was anybody hit during that day? A. Yes, sir; Smith was hit that day.

Q. How do you know he was hit that day? A. I was in the cabin, and the Mistress says to me —

Q. How did you know he was hit? A. I saw him tumble over when I fired.

Q. Where was Smith at that time? A. He was standing on a piece of board on the port side of the hatch, and Glew was standing close to him.

Q. Where were you? A. I came up to the forward corner, — came right close up.

* * * * *

Q. During the day, while the firing was going on, did you say anything to either of these three defendants, — you or the captain? A. Yes, sir; we sung out a great many times.

Q. What was said? A. Asked where the mates were. We said, give up the mates and we would leave them alone.

Q. What reply did the defendants make, if any? A. Smith told me once, he says, "You give me your revolver and we will give up the mates."

Q. Whom did he say that to? A. He said that to me.

Q. When was that? A. That was in the afternoon, as far as I remember.

Q. Who were present at that time? A. The captain was there standing not far off.

Q. Who else? A. No one else that I know of.

Q. Where were the three defendants at that time, if you know? A. Glew and Smith were all the time on the port side.

Q. Did you see Miller? A. I could not see him from that side; but when I ventured to the other side I saw him.

Q. Did either of the others say anything during the day? A. Yes, sir; they were talking sometimes, and sometimes very silent.

Q. What time did you leave off firing that day? A. I think it was along five or six o'clock.

The witness testified that, during the night, watch was kept, and the prisoners were seen from time to time until about one o'clock, when they disappeared; that in the morning, finding prisoners had gone into the fore-castle, they all rushed forward and closed the fore-castle door, and made it fast by putting some boards across it and nailing them there; that they then looked about the decks and in the hold of the vessel and all around to see if they could find the mates, but could not find them.

The examination continued as follows:—

Q. Describe what was done Thursday morning after you didn't find the mates. A. After we made the fore-castle door fast we went and pumped a little. We went forward again and took the bolts off of the window on the starboard side. We looked in to see if we could see anybody. We saw nobody first. We were walking round there, and at last I saw Miller looking round the corner.

Q. Was he inside or outside? A. He was inside, looking round the bunks. He was in the corner on the starboard side. I fired in the fore-castle then; fired in twice, and the captain sung out, "What are you doing? Don't fire in the fore-castle that way; you will be shooting the mates." I said, "No, it is Miller; I saw him." He said, "Don't fire in there." I said, "All right." We looked round more and took the bolts off of the other window, and looked in there, but didn't see anybody. At last Jake said he saw Glew lying in a bunk in the fore-castle. I went and looked, but could not see him. Then the captain said he was going to make some boiling water and throw in some boiling water. The hole on the top of the deck was closed; we ripped it up to see if we could see anything. The captain thought there was a hole in the deck, so they could go down below. I told him there was not; I had been looking in. He said, "There is."

Q. Describe what was done? A. We next threw in some boiling water, and I pulled out the mattresses.

Q. Out of what? A. Out of the port window.

Q. How did you get hold of them? A. Put my hand in and hauled them out. Then I saw Smith come from the starboard side. He was coming over to the port side, inside the fore-castle. I fired at him, and the captain sung out the

same way that he had done before, I should not fire in ; I would be shooting the mates. I said, "No, that is Smith."

Q. Go on. A. He said I should not fire in there. Said I, "There is no use to try to get them. If you don't fire at them you will never get them." He said he was going to make some holes through the galley, and we made holes through the galley.

Q. How did he make the holes ? A. He had a bit, and he bored holes in it and knocked the boards out.

Q. Did you see anybody inside ? A. We could see them moving round, but we could not tell who it was.

Q. Did you see them moving anything around, or themselves around. A. They put pieces of cloth in the holes the captain made. I pulled them out, and then they put a bag in there, and I could not get that out. We commenced making more holes, and at last made a hole on the port side, and took out the whole board. I took a shear pole and rammed into the hole, but it was not long enough, and I could not reach them. They had trunks and beds and clothes that they put up against the holes. They put a trunk up, and I smashed it all to pieces and stove the end in with the shear pole. The shear pole is an iron bar that goes around the rigging. At last I saw his leg.

Q. Whose leg ? A. Miller's.

Q. What did you do ? A. I fired three times without stopping. They were singing out the mates were in there. That was before we fired through the hole. I sung out to know if the mates were in there, and Glew said "Yes" once. I told him to give them up and send them out. He didn't say anything, but kept still then. After I fired three times at Miller's leg I went aft to the cabin, and they had given up when I came back.

Q. Describe how things were when you came back ; describe where these three men were when you came back. A. They were inside the fore-castle.

Q. What were they doing ? A. They were in there crying. We got the irons there after that, and they put their hands out through the window, and we put them in irons.

Q. Was that done before you got there or after ? A. After I got back there.

Q. Describe what took place. A. The captain was talking to him and saying, "What did you kill the mates for ?" and talking to Glew and Smith.

Q. What was said ?

Q. (by Mr. Sennott). Did the captain lay aside his pistol ? A. Yes, sir ; I think he did.

Q. When did he lay it aside ? A. I think he laid it away ; I didn't see him have it.

Q. Didn't you see him put it inside his vest like that?
A. No, sir; I didn't take any notice.

Q. Whether he had it or not you don't know? A. I don't know.

Q. What was the first thing he said to anybody in your hearing, or didn't you hear what was done about the surrender? A. What he said at that time I didn't hear.

Q. When you got back was he saying anything to them that you did hear? A. Yes, sir; he was talking to Smith.

Q. Did he say anything that you heard? A. Yes, sir.

Q. Did you hear him say anything about "You must come out," or were they all given up at the time you got back?
A. Yes, sir; all in the fore-castle, but Miller had not the irons on.

Q. Did he speak to him? A. Yes, sir.

Q. Did you hear him say at any time something like this, "Get up and get the irons put on; you must get up"?
A. Yes, sir.

Q. Had you your pistol? A. Yes, sir.

Q. Did you say anything to them about getting up?
A. Yes, sir.

Q. What did you say to them? A. He says, "I-can't get up."

Q. Who? A. Miller.

Q. What did you say? A. The captain said, "You can get up," and I said to him, "If you don't get up I will shoot you."

Q. Was anything else of that kind said by the captain and you? A. That I would shoot him? No, sir; the captain didn't say so; I said so.

Q. The captain was right there and heard you? A. Yes, sir.

Q. He could not help hearing? A. No, sir.

Q. Two of the prisoners were standing up by the cabin window, and one was not up yet? A. Glew was lying down and Miller was lying down.

Q. Did you speak to any one in particular, or to the whole three of them, when you said, "If you don't get up I will shoot you"? A. That was Miller.

Q. You would have shot him if he had not got up? A. No, sir; I thought he would get up anyhow, and he got up. There was no need of it.

Q. Do you recollect what you said further,—if you said anything more about shooting them if they didn't do this or that? A. No, sir; not at that time?

Q. Tell us what was the next time you said anything to them about shooting them. A. After that I didn't say anything to them about shooting them.

Q. Was that the last of it? A. Yes, sir.

Q. Did anybody else say anything to them about shooting them if they did not do anything? A. Not that I heard of.

Q. Just about that time I suppose the revolvers both of them were loaded so you could fire two or three barrels apiece if you wanted to? A. Yes, sir.

Q. Was Jacob there? A. Yes, sir.

Q. Did he say anything at all to Henry? A. Not as I remember of.

Q. At that time—at that particular minute—at that time when they were getting ready to surrender—did he say anything to anybody? A. He might have said something to them, but I don't remember.

Q. Were the prisoners tied when you got there,—chained I mean? A. No, sir.

Q. Did the captain have the irons in his hands? A. Yes, sir; I think he had.

Q. The irons in his hands? A. I could not say that. I was on the outside of the house.

Q. The irons were not on the prisoners, any of them, at the time you got back? A. Not that I remember of. They might have had the irons on, but I don't know.

Q. Did the captain, before he put the irons on, say, "Why don't you tell me where the mates are? Why don't you tell me what has become of the mates?" Did he say that? A. He was asking about them, but I didn't hear that. He said, "Where are the mates?" and they said, "I killed them."

Q. Didn't he say this, "If you don't tell me where the mates are I will shoot; I will fire at you"? Didn't he say that to one of them? A. Not that I know of.

Q. Didn't he say to somebody, "Tell me where the mates are, or if you don't tell me where the mates are I shall fire"? A. No, sir; I never heard that.

Q. How many times did you hear him ask the question, "What has become of the mates"? A. I only heard him once.

Q. Did you ask that question of anybody? A. Yes, sir, afterwards.

Q. After they were all surrendered? Did you ask the question at all before they were surrendered? A. No, sir.

Q. Did Jacob? A. Not that I know of. I don't remember anything about it.

Q. Was Henry there? A. I think by that time he went aft, out to the wheel.

Q. He was at the wheel at the time of the surrender? A. I don't think there was anybody there. I think Jake

was there and Henry was there. I think they had the wheel fast.

Q. Was the wheel lashed? A. We had the wheel fast.

Q. Jacob was there, didn't you say just now? A. Jacob was at the same time the captain was putting them in irons.

Q. (by Mr. Cummings). State what you first heard said when you returned after they surrendered. When you first came there what was the language you heard? A. I heard him talking to Smith. He says, "What have you done with the mates?" He says, "I killed Charles."

Q. Who said that? State all you heard said about the first mate. A. The next thing I heard him talking to Glew. He was talking to him what they killed the mates for, and Glew says, "I didn't. I had nothing to do with it." Smith slews round and looks at him and says, "No, you are innocent now! You are as bad as any of us."

Q. Did Glew make any reply to that? A. He said no, he did not.

Q. Did you hear Miller say anything at that time? A. Not that I remember of. He was singing out, but I don't remember what it was.

Q. State what was done. A. We took them forward.

Q. Whom did they take forward? A. Miller and Smith they took forward.

Q. Where was Glew? A. He stopped in the forecabin; he could not walk.

Q. Had you stated all that was said at that time? Miller and Smith had been carried forward and Glew put in his berth. That is where your story left off. You said Smith and Miller were taken forward. What was said? What took place? A. The captain asked him what he killed the mates for, and he said, "We killed them."

Q. Which one said that? A. Miller said it.

Q. Did Smith say anything about it? A. He said, "Don't hang us; take us before the law."

Q. Who said that? A. Miller said so.

Q. State anything you said. A. That was all I heard of at that time.

Q. What was done then? A. Then we went to work on the vessel to get the sails ready. The foresail was all blown away from the mast and the boom was off of the mast. We fixed it again.

Q. Subsequent to that time—after that time, after the time you just spoke of—did you ever hear Miller make any statement as to the death of the first mate? A. Yes, sir.

Q. When? A. I was talking to him several times, and he always told me the way he did it.

Q. Do you recollect when the first time was? A. I think the second day. I don't think I asked him anything about it the first day.

Q. Where was it, and who was present? A. There was nobody but me.

Q. Where was it? A. At the pumps.

Q. What took place? A. He was standing at the pump. I asked which way he killed the mate, and he told me he done it in this way. Smith came forward, and he called him, — called Miller and Glew. When the mate came on deck, Smith had the second mate knocked overboard, and threw the capstan-bar on the main deck. Then he went aft and called the mate. Smith did.

Q. What did he say to the mate? A. He said, "Mr. Patterson, it is eight bells." It was his watch. [*Objected to; admitted.*]

Q. You say Smith said, "Mr. Patterson, eight bells"? A. He sung out eight bells, and the mate came out of the cabin and went to the man at the wheel, and stood on the starboard side by the hatch on the aft corner. He was looking around, and he looked forward first and then looked aft; and Miller he came from the starboard gangway towards the mate. When he came towards the mate the mate holloas to him, "What do you want?" Then he holds the bolt over his head, and when the mate saw the bolt come down he sang out, "Oh!" The man at the wheel he heard this noise. He stunned the mate, and Glew and Smith came up then, and they picked him up, — two taking him by the shoulders and one hold of his legs, — and threw him overboard, and just got one grunt out of him. They threw him overboard head foremost, and he sunk like a stone.

Q. Was anything else said at that time? A. No, sir.

Q. When did you next have any talk with Miller about the death of the first mate? A. I talked with him at different times about it; he always said the same thing.

Q. Did Miller ever say what he struck the mate with? A. Yes, sir; with that iron block-strap.

Q. After the conversation with Miller you have just told of, do you recollect when next you spoke to Miller and who were present? A. When anybody was present the captain and Jake were there and the Mistress.

Q. When was that, to the best of your recollection? A. That might have been about a week after. I could not say. Perhaps four or five days.

Q. What took place at that time? Where were you? A. I was standing there, and the captain got him from the pump at that time, and the whole of us were there at the

cabin door. The captain took him away from the pump and says, "George, I want you to go aft and to show us where you killed the mate." He says, "Yes." The captain says, "I want you to stand just the same way as the mate stood when you struck him." He says, "He was standing right here at this place, and he was looking aft and was looking forward." He said, "When he heard him coming, he sung out, 'What do you want?' and I hit him with the block-strap, and he sung out, 'Oh, oh!' and I struck him once over the head."

Q. Recollect anything further at that time? A. Then he says, "We took him up and threw him overboard, three of us, and he sunk like a stone"; that he threw him overboard head first. I think he said Glew and Smith had hold of the legs; I think it was Glew he said.

Q. Do you recollect anything further? A. Yes, sir; the captain was talking to him about what vessels he had been in, and asked him if he had been second mate. He said, "Yes, in two or three different vessels."

Q. Recollect anything further said at that conversation? A. He asked him about what kind of a cap he had on. He said, "He had a cap like one you had on."

Q. One who had on? A. The captain. He had a cap on of the same kind that the mate had when he killed him.

Q. Did he say anything about the rest of the mate's dress besides the cap? A. Not that I remember.

Q. Was any piece of iron shown? A. The captain had that piece of iron and showed it to him.

Q. What piece? A. This same piece.

Q. What, if anything, did he say he struck him with? A. The captain asked him, "Is this the piece of iron you killed the mate with?" He says, "Yes, that is it."

Q. When next after, to the best of your recollection, did you hear Miller make any statement about the death of the first mate? A. The captain asked him then and said, "What would you do with my wife? Would you kill her?"

Q. Go on, if anything more was said. A. I think he said he was going to put her down in the hold; and the captain asked if he was going to kill him. He said no, he was going to tie him and put him down in the forehold. He asked him, "What would you do with the vessel?" He said he was going near the land, and take a boat and scuttle the vessel and sink her.

Q. Recollect anything further at that time? A. No, sir; not that I remember of.

Q. When next did you talk with Miller about the death of the first mate, if at all? A. I was talking with him, and

believe it was the same night again I was talking with him about it. He said the same things.

Q. How many times during the voyage should you say, to the best of your judgment, Miller gave an account of the death of the first mate? A. I should think six or seven times. He said all the time the same thing.

Q. Who were present at the various times you heard him make statements? A. Nobody was present at any other time.

Q. Did you, subsequent to the surrender, ever hear Smith make any statement in regard to the death of the first mate? A. I asked him one day just when he left the pump, "What made you go to work and kill the mate? You and Charles were always great chums." He says — [*Objected to and admitted.*] I asked him, "Why did you kill the second mate? You and him were always chums." So he says, "If we killed one we had to kill the whole."

Q. Who was present at that time? A. There was not anybody there but me and him.

Q. Did you ever say anything to Miller about why he called the first mate? A. Yes, sir.

Q. Did he ever give any reason? A. No, sir.

Q. Did you ever hear Smith make any other statement with regard to the death of the chief mate? A. No, sir.

Q. Did you ever hear Glew say anything in reference to the death of the first mate? A. The only thing he said, he helped chuck him overboard.

Q. When was that and where? A. That was on the passage, within a week or two after.

Q. Where was it? A. In the fore-castle.

Q. Who was present? A. There was nobody there but me and him talking.

Q. Did you ever hear Glew make any further statement about the first mate? A. No, sir; he always denied it; said he had nothing to do with it. He said he was willing to join in with them, but didn't do anything. He said that all the time.

Q. Did Glew ever make any statement to you as to where he was when the captain was called on deck? What more, if anything, do you recollect Glew's saying to you about the events of that night? A. He said that he had been talking it over that night at eight o'clock.

Q. Talking it over with whom? A. With Miller and Smith.

Q. On the night of the 20th? A. Yes, sir; the dog watch, — eight o'clock.

Q. Did he say anything more at that time? A. He said he had been standing there with a capstan-bar at the after

part of the house. He said at another time at the after part of the fore house.

Q. At what time was he standing there? A. At night, when they were going to kill the captain.

Q. What more, if anything, did you hear Glew state? State all that you remember. A. He said he had been standing there at night with a capstan-bar; at other times he said he didn't have anything to do with it at all.

Q. When he spoke about the capstan-bar who was present, if anybody? A. The captain was there.

Q. Where was it said? A. In the fore-castle; he was in the fore-castle.

Q. Did you hear Glew say anything further about the events of that night? A. He said he had nothing to do with it, and another time that they called him out after it was all over,—out of his bunk,—and he didn't know anything about how it was done.

Q. Anything further did Glew say? A. Not that I remember of.

Q. What did he say about the conversation he had with Miller and Smith at eight o'clock that Tuesday night? A. He said that they made it up; that they were going to kill him that night.

Q. What did he say about the conversation he had with Miller and Smith at eight o'clock that Tuesday night,—what, if anything? A. He said they had been talking about when they were going to kill him that night. He said they made it up that night at eight o'clock, which was, they were going to work to kill him.

Q. To kill whom? A. He didn't say that.

Q. And anything further? A. No, sir; I didn't talk any more about it.

Q. What, if anything, did you say to him just before he said what you have just testified to? A. I went to ask him about it.

Q. What did you ask him? What was your question? A. I asked him what time they made it up to kill the mates. He said at eight o'clock they talked it over.

Q. Prior to April 20th were any inquiries put to you by the defendants as to the position of the vessel, where the vessel was? A. Yes, sir.

Q. When and where? A. It was a couple of days before that.

Q. Whom by? A. Smith. He asked me,—Smith and Miller (he was there),—and they asked me where the vessel was, and I told them we were off the Western Islands, and Smith said, "We are five hundred miles from the channel."

Q. Anything further said at that time? A. No, sir; he didn't say anything more that I remember. I said, "You will find it is a good deal further than five hundred miles," and he says, "No, I shall not."

Q. Before April 20th did you hear either of the defendants utter any threats or saying as to what was to happen on board the vessel, and what, if anything? A. One day when I was forward looking in the fore-castle they were all wet, and Jake was in the fore-castle, and says, "I think this is awful; you have to be afraid to go along the decks, you must expect to go overboard." He says, "You will see some fun yet when I commence; you will see the time you will be crying mercy for me."

Q. Do you identify this piece of rock? A. That came out of the grindstone; there was another piece of it,—five pieces were picked up.

Q. Where was Mrs. Patterson during the morning of Wednesday, April 21st? A. She was aft, keeping a lookout. Towards night she came out, and was crying out on deck if they would give up the mates. She first went to the port side of the cabin, then right abreast of the house,—the aft part of the forward house. She was there standing crying and asking them, saying, "Please give up the mates," and they were singing out to Smith to give up the mates, and Glew was standing looking round the corner, and Smith was behind him.

Cross Examination.

This witness, on cross-examination by Mr. Hill, testified that Miller voluntarily showed the captain where and how he killed the first mate, and that he did not think the captain had a piece of iron in his hand at the time; that the water was some of it brackish; that the men complained of the bread and of the hard work; that they did not work quick enough for the captain, and that he growled at them a good many times; that he saw Miller when he was put in irons and tied up to the rigging, and that he was standing upon the deck, but not on his toes, and that he did not state in jail to Mr. Hill that Miller, when he was tied up at the rigging, was standing on his toes; that Miller, after the surrender, was at one time very lame, but afterwards a good deal better; but that the balls were not taken from his leg till he arrived in London.

In reply to cross-examination by Mr. Field, this witness

testified that he had sailed with Captain Patterson two years, but was not now connected with the "Jefferson Borden"; that Glew was not a troublesome or noisy man, but was not a very good sailor, and was growling sometimes, but it didn't amount to much; that he heard the growling between the captain and Glew about Glew's interfering when Miller was being put in irons, but did not see him leave the wheel; that on the night of the 20th of April he went to bed at about nine o'clock; that after he was awakened by the talking in the cabin and had got up, he went on deck and went forward to about abreast of the forward corner of the house, and saw Miller and Smith standing on the forward corner of the fore-hatch and Glew standing on the port side of the fore-castle door looking aft; that he stepped back and returned to the cabin, and that he then looked at the clock and it was ten minutes before twelve o'clock; that between that time and daylight, five o'clock in the morning, he went out two or three times remaining on deck about five minutes each time, and that the captain went out certainly twice and perhaps three or four times; that the prisoners commenced to throw things at them when the captain and the witness commenced firing at them in the morning; that the firing was continued, more or less, all that day and part of the next; that at the time the prisoners surrendered he went aft, and that when he returned Smith had his hands through the window and the captain was putting the irons on him. The witness testified that after the surrender Glew remained in the fore-castle, lying in his bunk all the time till the vessel arrived at London; that Miller and Smith were generally kept apart, though sometimes they were in the fore-castle together; and that when he had the conversations with Miller and Smith, which he has narrated, Glew was not present.

The examination continued as follows:—

Q. Have you had many conversations with Glew? A. I didn't talk to Glew so much as I did to Miller, neither to Smith.

Q. Then you didn't have much conversation with Glew about it? A. No, sir; not so much.

Q. Do you remember how long it was after the surrender or giving up of the men when you had the first conversation with Glew about any transactions on the night of the 20th?

A. A couple of days after.

Q. It was at least a couple of days after, was it? **A.** That is what I think.

Q. Do you remember any conversation with Glew when Captain or Mrs. Patterson was present? **A.** I remember they was talking about a book there, but I don't remember I was there. I was there sometimes when she was there, I believe twice, but I don't remember what was said.

Q. You were there in the fore-castle twice when Mrs. Patterson was there? **A.** Yes, sir.

Q. Were you ever there when anything was written down by anybody? **A.** I think, as far as I remember of, she was writing down something when she was there talking to Glew.

Q. Who was writing down something? **A.** I think the Mistress was writing down something; but I ain't sure of that.

Q. And talking with Glew? **A.** Yes, sir; she asked him something about his mother and father, where they was; I remember that.

Q. Was anybody else there besides you and Mrs. Patterson and Glew? **A.** Not as I know of, sir.

Q. She asked him, you remember, something about his father and mother? **A.** Yes, sir.

Q. Then he said he didn't have anything to do with it? **A.** I think he told her one time that he didn't know anything about it until ten o'clock at night.

Q. Didn't he say then, at that time, that he didn't have anything to do with it? **A.** Well, I ain't sure of that, sir. He denied everything always to the Mistress, as far as I know of.

Q. He always denied then to her having anything to do with it? **A.** Yes, sir; as far as I know of.

Q. Do you remember more than two conversations you had with Glew when Mrs. Patterson, the captain's wife, was present? **A.** No, sir; I don't know much about that, sir.

Q. Glew always denied to you, didn't he? **A.** Yes, sir; he denied it. He said that he was willing to join in with it, but he didn't do anything.

Q. Always said so, didn't he? **A.** Yes, sir.

On further cross-examination by Mr. Field, this witness testified that he had talked this affair over a good deal

with Captain Patterson before arriving in London, but not after that ; that he had heard Jacob and the boy talk it over before they arrived at London, but after that none of them talked much about it, and that they hardly spoke of it on the passage to this country ; that they had talked about it some during the last few days, but not much, as they " had got used to it, and didn't think much more of it " ; that he could not swear to the exact words that were used during the night of the 20th and on the 21st and 22d of April ; that he could not tell exactly what he had said to Captain Patterson, Mrs. Patterson, Jacob or the boy, or exactly what either of them had said to him ; neither could he tell the exact words Miller, Smith or Glew had used, but only his understanding of them,—his impression of them now ; that he had taken nothing down in writing at the time, and was now relying upon his memory alone ; that they were all in a very anxious and excited state of mind during the night of the 20th and the 21st and 22d of April, and had a great deal of trouble and all they could do to take care of the prisoners and man-age the vessel till they arrived in London.

Mr. Sennott cross-examined this witness at great length upon the treatment of the crew by the captain and mates of the " Jefferson Borden " before the mutiny ; the manner of quelling the mutiny and forcing the prisoners to surrender ; and the treatment of the prisoners after the surrender.

EXAMINATION OF JACOB LIMBER.

Jacob Limber testified that he was a seaman on board the " Jefferson Borden " on the 20th of April last, and that that vessel carried the American flag ; that between six and eight o'clock of the evening of said 20th of April he and Smith were in the fore-castle in their bunks talking about the lights of the coast of England, but he could not say who started that conversation ; that at eight o'clock he went to the wheel and relieved Glew, and remained at the wheel till ten o'clock, when he was in turn relieved by Smith and went forward ; and that the night was a moonlight night.

The examination continued as follows :—

Q. When you went forward, where did you go and what did you do? A. I went in the fore-castle when I came forward, and lit my pipe.

Q. Whom did you see there, if anybody? A. I see three men in their bunks.

Q. Who were they? A. Miller, Glew and the boy.

Q. Then you went out, and what did you do? A. I sat on top of the spars on the port side of the house.

Q. How long did you stay there? A. About three quarters of an hour.

Q. What took place next? A. The second mate came forward and told me to pump her out.

Q. What did you do? A. Me and the second mate pumped her out, and me and the second mate sat on the spars.

Q. You and the second mate pumped her out, and were about how long? A. About ten minutes.

Q. Then you and the second mate did what? A. We sat on top of the spar alongside of the house,—port side of the house.

Q. How long did you sit on that spar? A. About ten minutes.

Q. What took place then? A. The second mate went aft, sir.

Q. What took place next? A. Smith came running forward, and he said to me,—I sat on top of the spar,—go and relieve the wheel while he was doing a job over the bows.

Q. What did Smith say to you? A. Go and take the wheel while he is going to do a job for himself over the bows.

Q. What did you do? A. Smith came along and said, "Go on, go on!"

Q. What did you do? A. I went aft. The second mate, he was standing at the wheel, and he gave the wheel to me and stood a little while alongside of me, and Smith sung out, "Jib-sheet carried away!" The second mate walked forward. I think Smith sung out, "Jib-sheet carried away!" I was at the wheel then. The second mate he looked over the side, and he see the pennant flying over the side. He walked forward, and I see Smith and the second mate out on the jib-boom, two of them, sir. I see them when they went out. I didn't see them when they came in, sir. I cast my eyes forward again, and I see Smith jump on the fore-castle head on the main deck. I didn't see where he was gone after that, sir.

Q. What took place next? A. After a little while the mate came on deck.

Q. About how long should you think after that the mate came on deck? A. The second mate was gone about ten minutes forward, sir; and the mate came through the after cabin, sir; and he asked me —

[*Mr. Field. You need not state what he said.*]

[*Clifford, J. According to the course of the trial, that question would be excluded.*]

[*Mr. Sanger. We have no desire to press the question.*]

[*Clifford, J. We do not mean to rule in this trial that an order given by an officer to an inferior in respect to the management of the vessel and the report that officer made back is not admissible.*]

Q. How long did the chief mate stay by you? A. He was standing by me about five minutes.

Q. What was the mate doing while he waited that five minutes? A. He didn't do anything. He was standing alongside of me.

Q. Where is the compass of the vessel? A. Right front of me, sir. Say I am here; the compass was here, sir (*indicating a point directly in front of him*).

Q. When the mate left you which way did he go? A. He went off on the port side.

Q. Which was the weather side that night? A. The port side.

Q. On which side of the house does the officer of the deck go? A. The weather side, sir.

Q. What took place next? A. When the chief mate went down the deck, I didn't see him after that.

Q. State anything that occurred. A. Directly he went down the main deck I heard somebody sing out, "Oh, oh!" twice.

Q. Did you hear anything more? A. No, sir.

Q. What happened next? A. Well, after a little while the captain came and sung out the second mate's name.

Q. State what he said. What words did he use? A. "Charlie Patterson."

Q. Where did he stand when he sung out that? A. He was standing on the main deck, front of the cabin.

Q. How loud did he speak? A. Oh, he sung out loud, sir.

Q. How long was it after you heard some one say, "Oh, oh!" before you heard the captain call, "Charlie Patterson!" A. It might be a little more than ten minutes.

Q. What happened next? A. He sung out the chief mate's name next.

Q. What did he say? A. "Mr. Patterson."

Q. What next? A. The next he came in after me.

Q. How long after he shouted "Mr. Patterson" was it that he came for you? A. Not five minutes I don't think.

Q. Was the captain dressed at that time? A. No, sir; he had only his trousers on.

Q. He had on his trousers? A. Yes, sir, and shirt; that is all.

Q. After the captain spoke to you what took place next? A. He asked me —

Q. You need not state what was said, but what was done. A. He went out again and sung out twice.

Q. What did he sing out? A. The mate's and second mate's name, "Charlie Patterson" and "Patterson."

Q. Did you hear any reply made when he sung out at any time? A. No, sir.

Q. Did you ever see the second mate after you saw him go out on the jibboom? A. No, sir.

Q. Did you ever see him after he disappeared from your sight around the cabin? A. No, sir; I never saw him.

Q. How loud did the captain speak when he called out, "Mr. Patterson" or "Charlie Patterson"? A. He sung out "Charlie Patterson" twice, sir.

Q. Where did you stay during that night? A. At the wheel.

Q. Did you see anybody forward that night? A. Yes, sir.

Q. Where? A. I see the men keep looking out the fore side of the house round the corner.

Q. On which side? A. The port side, sir.

Q. Do you know who it was? A. I don't know; I can't say.

Q. Did you see anybody else ahead that night? A. I didn't see anybody else, only I see the men keep looking out the corner of the house, port side, forward side.

Q. Could you, while at the wheel, see on the starboard side of the forward house? A. No, sir; I couldn't. The sails was up, — the booms.

Q. Were you sailing close to the wind or not that night? A. No, sir; the wind was right aft, sir.

Q. What occurred the next day? A. The captain came aft to me, and says he to me —

Q. You need not state what he said, but what was done the next day. A. The captain commenced shooting into the fore-castle, in forward, sir.

Q. Who did any shooting that day? A. The captain and steward, sir.

Q. Did you at any time leave the wheel? A. Yes, sir.

Q. When? A. Two or three times that day.

Q. Where did you go? A. Along with the captain.

Q. What was done with the wheel when you left it? A. Lashed fast.

Q. Where was the boy Henry that day? A. He was sometimes standing at the wheel and was sometimes in the cabin, sir.

Q. Did you go forward that day at all? A. Yes, sir.

Q. How far forward? A. The aft side of the house was as far as I went.

Q. The aft side of the forward house? A. Yes, sir.

Q. Did you see either of these three prisoners that day? A. Yes, sir.

Q. Where were they? A. The forward side of the house, all three of them.

Q. What did you see them do, if anything? A. Heaving stones and bottles.

Q. At whom? A. All three of us.

Q. When you left the captain where did you go? A. Aft to the wheel, sir.

Q. (by Clifford, J.). Did you see them throw anything but stones? A. Yes, sir; bottles and pieces of wood and pieces of cast-iron. They smashed a grindstone to pieces.

Q. Did you ever see that (iron strap) that day? A. Yes, sir; this was lying on top of the forecastle.

Q. Did you see it that day? A. I don't remember.

Q. How long did you stay at the wheel after the shooting began? How much of the next day were you at the wheel? A. Sometimes I was standing there three hours; sometimes I was standing there four hours.

Q. Well, what was done that night? A. Well, we took the sails down the second night, sir.

Q. Did you see either of these men that second night? A. Yes, sir.

Q. Where? A. Forward side of the house.

Q. How late did you see them the second night? A. About six or seven o'clock, I think, sir, I see them the latest.

Q. Where did you see them last the second night, and what were they doing? A. I see them the fore side of the house.

Q. What were they doing, if you could see? A. The captain sung out, "Are you going to lower the foresail down and clew the foresail up?" They didn't give any answer.

Q. Did you hear the captain say anything to them during that first day when they were shooting? A. Yes, sir.

Q. What did he say? A. He asked them, "Where is the mates? Give the mates up."

Q. Did you hear them make any reply? A. No, sir; no answer.

Q. Now, what was done the day after they disappeared,—the second day of the fight? A. They put them in irons the next morning.

Q. Will you describe what was done before they put them in irons, if anything? A. They were shooting inside the forecastle.

Q. Do you recollect anything that was done before they began to shoot into the forecastle? A. Yes, sir.

Q. State it. A. We shut the door.

Q. Who closed the door? A. I closed the door, and the boy nailed it, sir.

Q. Who were present at that time when the door was closed? A. The captain and steward, sir. The captain stood on the port side and the steward on the starboard side of the forecastle.

Q. At what time were they put in irons? A. I think it was about twelve o'clock.

Q. Where were they put in irons? A. In the forecastle, through the window.

Q. On which side? A. Starboard side.

Q. Who were there when the first iron was put on? A. The captain and me.

Q. Where was the steward? A. The steward was on the port side, sir.

Q. Which was ironed first? A. Glew.

Q. Which next? A. Smith, sir.

Q. And which next? A. Miller last, sir.

Q. Now, after they were ironed, will you state everything that was said, if anything was said by anybody?

[*Mr. Sennott objected, but the Court admitted the question.*]

Q. You may state anything that you heard said, before the prisoners were ironed, between the captain and these three prisoners. A. I don't remember him saying anything before they were put in irons.

Q. Now state anything you heard said after they were put in irons. A. The captain asked the same time he put him in irons, "Are the mates in there in the forecastle?" Miller say, "No, sir."

Q. Go on. A. Captain asked "Where is the mates?" Miller say, "I believe they are over the sides." Captain asked, "Who knocked the second mate over the side?"

[*Mr. Sennott objected, and after hearing counsel on both sides, the Court said:*]

LOWELL, J. I think this evidence is admissible on several grounds. However, it is enough to state now, perhaps, that there is evidence to go to the jury of which they will judge that, as far as two of the defendants are concerned,

certainly, and even so far as they are all concerned, there is, perhaps, some evidence to go to the jury of which they will judge, that all the transactions of that night were a conspiracy, were agreed upon beforehand, and that it is in fact but one transaction which is in question now. I believe that the answer that it is expected will be given by this witness was, perhaps, improperly given by another witness, so that we may, perhaps, know what it will be. Assuming that it will be what that witness said, I think it would be clearly evidence against that defendant as an admission, on the ground stated by the district attorney; that is, it would tend to show what was intended and contemplated. It would be clearly admissible upon that ground, if the answer is what we expect. But in ruling, of course we must assume that it would be an answer applicable to some other of the defendants, and on that ground it is admissible. My own opinion is that it is admissible as part of the conversation.

CLIFFORD, J. It is true that evidence of the commission of one crime is not admissible to prove the commission of another. But it is held by good authorities that preconcerted acts and schemes for the commission of a crime are admissible, especially in charges of murder, to show malice. It is one of the instances put in all the books that preconcerted crimes and schemes are admissible as evidence of malice, and every one who knows anything of the criminal law knows very well that one material allegation, if not *the* material allegation in a charge of murder, is that the act was done maliciously and with malice aforethought on the part of the party charged with committing the deed. Some doubts arose when the question was previously presented to the Court about the ruling which we made; but upon the whole we came to the conclusion that it was better to exclude it at that time. Inasmuch as one of the judges did not feel entirely clear that it was admissible, we thought it safer to give the prisoners the benefit of the doubt, which rested more particularly, perhaps, in my mind, and excluded the evidence, at the same time remarking that there were two qualifications to the rule: first, that in a case where the evidence of the second crime was so connected with that offered to prove the crime on trial that the evidence of that crime could not be understood or appreciated unless the whole went to the jury, the whole must go to the jury; the other qualification was that where there was a conspiracy (perhaps I used that word; it would have been better if I had said preconcerted scheme or plan to commit the deed) then the whole must come in, upon the ground that to a certain extent the act and conduct and declarations of one was the act, the conduct and declarations

of all the parties. Now, in the very nature of this transaction there is more or less proper ground of inference that here was a preconcerted plan either to kill or overpower and secure all of the officers and all of the men on board that vessel who did not concur in the scheme or plan which was devised to be carried out. In carrying out the scheme, which the evidence which has been introduced tends to show was preconcerted at least as early as eight o'clock on the evening of the 20th, if not before, between the three, the first step might naturally be supposed to be to dispose of the second mate as he was the officer of the deck. They did not wish, probably, to encounter two or all of the officers at any one time. Almost necessarily, therefore, they must be disposed of separately, and as the second mate was the officer of the deck, if the assault was made upon the mate or upon the master first, the second mate would naturally make an outcry, and whoever did not concur in the plan or scheme would be likely to go to the assistance of the others. In order, therefore, to their own security they would naturally first find it convenient and necessary to dispose of the officer of the deck, and then of either the mate or the master, whichever appeared in their way first. On the evidence which is in the case tending to prove the fact, it will be for the jury afterwards to decide whether it does prove it or not, some of the defendants (Miller perhaps) at one time said they proposed to dispose of the master as they disposed of the mate. At other times they said they did not intend to kill him, but intended to confine him in the hold with his wife, and then scuttle the vessel when they got near the shore, and allow the whole to go down. The evidence all tends to show that the purpose was to get possession of the vessel; and in order to take possession of the vessel, it became necessary for them to dispose of all opposition that came in their way, either by immediate destruction, or by putting the parties out of the way, so that they would not appear against them in courts of law at some subsequent period.

Taking the whole together, I am now entirely clear that this evidence is admissible as a part of the transaction, the prior evidence having been introduced to show that there was a preconcerted plan to take possession of the vessel. I think the evidence in that respect is for the consideration of the jury. The Court do not mean to decide that it is sufficient, nor that the jury will come to that conclusion; but we do decide that there is enough to go to the jury upon that question, and that, therefore, a proper foundation is laid for the admission of this evidence. I concur, therefore, in the conclusion of my brother, Lowell.

You may proceed with the examination.

Q. Now go on and state what was said at the time of the surrender. A. The captain asked, "Who knocked the second mate over the side?" Smith said he did, sir. Captain said, "Over where?"—"Over the bow, sir, with the capstan-bar." Captain asked, "Who knocked the chief mate,—who killed the chief mate?" Miller say he did, sir. "With what?"—"Piece of the iron strap." Captain asked where he got that iron strap. "Off of fore-castle, alongside of the foremast."

Q. Anything further? A. I don't recollect, sir, what he says afterwards.

Q. Was anything said about how the chief mate came overboard? A. Captain asked, "Who has killed the chief mate?" Miller say he did. "With what?"—"Iron strap." He asked the men who put him over the side. "All three of them. He went down like a stone."

Q. Who said that? A. Miller.

Q. Who was it that said, "All three of them"? A. Smith and Miller and Glew, sir. "All of us helped send him over the side."

Q. Who said that? A. Miller.

Q. Anything further? A. Before we came to London, a couple of days before, sir,—

Q. No. Was anything further said that you recollect at that time? A. No, sir.

Q. Did Glew say anything then? A. Glew say he got nothing to do with it, and Smith turned his head round like this, and say, "Don't you plead innocent! You were as bad as the rest of us."

Q. (by Clifford, J.). What, if anything, did Glew say in reply to that? A. Glew say he got nothing to do with it.

Q. When Smith told him he was as bad as the rest, did he say anything in reply? A. He said, "No; he was innocent."

Q. (by Mr. Cummings). Was anything further said at that time that you recollect? A. No, sir; I don't recollect.

Q. Did you ever see that piece of iron before (exhibiting iron strap)? A. Yes, sir; that is the piece he had.

Q. Where did you see that piece of iron before? A. Miller had this piece of iron when he struck the mate.

Q. When did you see that? A. The captain took him aft to show what place he struck him.

Q. Were you there at the time? A. Yes, sir.

Q. Who else was there? A. Me and the captain and Miller, and there was this. I don't know anybody else. The steward was there.

Q. Did you hear Miller say anything, except at that time, about the murder of the chief mate? A. No, sir.

Q. Did you ever hear Smith say anything about anything that happened that night? A. Before we came to London I asked Smith one evening why he knocked second mate over the side. He say he knocked him down off the jibboom, sir.

Q. Anything further? A. No, sir. I asked him how he knocked him down. He didn't answer me. He didn't say.

Q. Did you ever hear Smith say anything else about it? A. No, sir; I didn't.

Q. Do you recollect ever hearing Glew say anything about what happened on the night of the 20th? A. No, sir; Glew always say he got nothing to do with it. He didn't done it, — only helped chuck him over the side.

Q. What did he say about that? A. He say he helped him.

Q. When did he say that? A. I don't remember what time he says that.

Q. (by Clifford, J.). Do you remember where it was? A. No, sir.

Q. (by Mr. Cummings). Do you know who were present? Did he say it to you or some one else? A. No, he didn't say it to me, but I heard that he said so.

Q. What did you say about Glew? A. Glew say he got no nothing to do with it.

Q. What else? A. I heard Smith and Miller say he had —

Q. You heard Miller and Smith say he did, but did you ever hear Glew say anything about it? A. No, sir.

Cross Examination.

Q. (by Mr. Hill). Jacob, were you there at the fore-castle when the captain was firing in there? A. Yes, sir.

Q. Did you hear the men cry out that they would give up? A. Miller sung out he would surrender.

Q. Were there any shots fired after that? A. The captain was in the galley, sir, and shoot Miller, and went to the star-board side and shoot Glew —

Q. What did he say to Glew? Did the captain shoot after Miller sung out? A. Yes, sir; he shot Glew about the same time that Miller spoke out. Not both together. He spoke to Miller first, and then he went right off on the starboard side and shot Glew.

Q. He shot Glew, then, after Miller said he would give up, did he? A. Yes, I think it was so.

[Adjourned.]

MONDAY, Sept. 27, 1875.

Upon further cross-examination by Mr. Hill this witness testified that he helped take Miller and Smith from the fore-castle after the surrender ; that they had rough weather after leaving New Orleans, and the men had to work pretty hard, but that they never refused to do all they could. This witness testified that he remembered the time when Miller was up in the rigging oiling the mast, and that he heard the captain sing out to Miller, "Don't grease the rigging !" and Miller reply, "All right !" and the captain again sing out, "Don't grease that rigging! You heard me !" and Miller again reply, "All right !" that the captain then jerked him up and down by the rope and ordered him down ; that the captain and the two mates seized Miller and, after a struggle, put him in irons and pulled him up in the rigging so that his toes just touched the deck, and that he, the witness, said to the captain, "That is too bad altogether. Let him stand on his feet"; that Miller got up to the rail as quick as he could, and stood there between three and four hours. Witness also testified that he remembered one time when Miller did something not exactly as the captain liked, and he kicked him in the face, leaving a slight scratch on his left cheek. He also testified that after the surrender, at the time the captain said to Miller, "Show me the place where the mate was standing and where you were standing," the captain had in his hand a piece of iron, an iron strap.

The cross-examination of this witness by Mr. Field then proceeded as follows :—

Q. (by Mr. Field). You went to the wheel at eight o'clock, did you, at the end of the dog-watch, on the night of April 20th? Whom did you relieve,—whom did you find there? *A.* I relieved Glew.

Q. Then Glew had been at the wheel before you went there? *A.* Yes, sir ; that was the change of watch at that time,—eight bells.

Q. Where were you during the dog-watch, from six to eight? *A.* I was down below in the fore-castle, me and Smith.

Q. All the time? *A.* Yes, sir.

Q. And you found Glew at the wheel when you took it?
A. Yes, sir.

Q. And what did Glew do, — where did he go then? A.
Walked forward.

Q. That was at eight o'clock? A. Yes, sir.

Q. Now, when was the next time you saw Glew? A. I
saw him the next morning.

Q. At what time? A. It was about seven or eight o'clock,
I think, sir.

Q. Then from the time you took the wheel at eight
o'clock, until the next morning at seven or eight o'clock,
you did not see or hear Glew? A. I was standing at the
wheel all that night, until about eleven o'clock (the next
morning), when the boy came and relieved me.

Q. When you took the wheel at the end of the dog-watch
and Glew left you, you didn't see him again until the next
morning, did you? A. Yes, sir; I saw him at ten o'clock
in his bunk, all three of them.

Q. Who? A. Glew, Miller and the boy.

Q. Were they asleep or not? A. I don't know; I didn't
speak to anybody in the fore-castle.

Q. You didn't speak to Glew, and Glew didn't speak to
you? A. No, sir; nobody. I just lighted my pipe and
went out on deck again.

Q. From the time Glew left the wheel at eight o'clock, at
the end of the dog-watch, until you saw him in the bunk at
ten o'clock, did you see him between those two times? A.
No, sir.

Q. How much of the ship's deck can you see from where
you stood at the wheel? A. Forward, sir.

Q. Could you see forward? A. Yes, sir; I could see up
the aft side of the mainmast.

Q. How far forward could you see, after you took the
wheel, on the deck of the vessel? A. I could see right in
forward.

Q. Could you see clear forward to the bows? A. Yes,
sir; daytimes you could see, — step aside and look.

Q. When you were standing at the wheel how far forward
were you able to see? A. Aft side of the mainmast, sir.

Q. Could you see forward of the mainmast? A. Yes,
sir.

Q. How far? A. Right forward as far as the ship went.

Q. Now, my question was, Between the time when Glew
left the wheel at eight o'clock and the time you saw him in
his bunk in the fore-castle at ten o'clock, did you see Glew
anywhere? A. No, sir.

Q. Now, after ten o'clock, when you say you saw Glew in

his bunk in the forecastle, when did you next see him? *A.* I see him the next morning.

Q. At what time the next morning? *A.* About seven or eight o'clock, I think.

Q. Now, from the time you saw Glew in the forecastle at ten o'clock, and the next morning at seven or eight o'clock, did you see Glew at all? *A.* No, sir.

Q. You were at the wheel all night? *A.* Yes, sir.

Q. And it was a moonlight night? *A.* Yes, sir.

Q. Full moon? *A.* Full moon that night, sir.

This witness further testified that when he took the wheel from Glew at eight o'clock, the second mate was front of the cabin talking with the first mate; that from eight to ten the second mate was sometimes aft and sometimes on the main deck; that somewhere from half-past nine to ten o'clock the captain was on deck, standing by the wheel, talking with the second mate; that some time before ten o'clock Smith and the second mate pumped the vessel out; that at ten o'clock Smith took the wheel, and the witness went to the forecastle and lit his pipe and sat on a spar, on the port side of the house, just abreast of the galley, and smoked for about three quarters of an hour; that he saw no one during that time but Smith, who was at the wheel; that then the second mate came to him, and they together went and pumped out the vessel about ten minutes, and then returned to the same place and sat together on the spar for about ten minutes longer; that he did not see any one except the second mate and Smith at the wheel during these twenty minutes.

The cross-examination continued as follows:—

Q. What next happened? *A.* The second mate went aft and Smith came running forward.

Q. How long after the second mate went aft was it that Smith came forward? *A.* Not five minutes, I don't think.

Q. Smith came forward and told you he wanted to do a job over the bows, and the second mate told you to go aft? *A.* Yes, sir; Smith told me, "Go on, go on; the second mate told you to go."

Q. You went aft and took the wheel? *A.* Yes, sir; the second mate was standing at the wheel, and gave the wheel to me.

Q. How long were you standing at the wheel before you heard anything from Smith? A. About two or three minutes. Smith kept singing out; "Jib sheet carried away!"

Q. Do you know where Smith was when he sung out, "Jib sheet carried away"? A. On the forecastle head.

Q. Could you see him, or could you only hear him? A. I heard Smith singing out, and the second mate went close to the port rails and looked forward, and he see the pennant flying over the jib stay.

Q. Did you see the pennant? A. Yes, sir; I saw the jib pennant over the stay.

Q. Then you did see it yourself? A. Yes, sir.

Q. Did you look along the port or starboard side of the vessel? A. No, you couldn't see the starboard side of the vessel; you could see the port side of the vessel.

Q. You looked along the port side? A. Yes, sir.

Q. The light was such that you could see fore and aft of the vessel on the port side? A. Yes, sir.

Q. How long a time was it after that that you say you saw Smith and the mate on the jibboom? A. Not two minutes.

Q. Whereabouts on the jibboom did you see them? A. I see Smith and the second mate out on the jibboom.

Q. Could you tell where? A. I don't know; there was two of them there.

Q. The light was such that you could see them? A. Yes, sir.

Q. Was there anybody else out on the jibboom? A. I never heard.

Q. Will you put your finger on the jibboom where you say you saw them? A. *[Witness puts his finger about midway of the jibboom on a picture of the vessel.]*

Q. You saw no one else either on the jibboom, or on the forecastle head, or anywhere, did you? A. No, sir.

Q. Nobody else was visible on board the ship? A. No, sir; I didn't see nobody.

Q. Now, how long a time after that was it before you say you saw Smith jump down from the forecastle head? A. Not five minutes, I don't think, sir.

Q. At that time did you see anybody else on board the ship but Smith? A. No, sir; I didn't see nobody else, and heard nobody.

Q. Now, what was the next thing you saw or heard? A. The next thing I heard the captain singing out the second mate's name.

Q. At any time did the first mate come to you at the wheel? A. No, sir; I never see the second mate after he went forward.

Q. I am asking now about the first mate : did you see the first mate after you saw Smith jump down from the fore-castle head ? A. Yes, sir ; the first mate was alongside of me, sir.

Q. Where did the first mate come from ? A. He came from the after cabin door, sir, right through the cabin.

Q. Now, if you take that to be the cabin and that end the after part, he came out of the cabin through the aft cabin door, did he ? A. Yes, sir.

Q. He didn't, then, come round the gangway ? A. No, sir ; he came through this door, and stand right side of me, about five minutes, and asked, " Where is the second mate ? " and I say, " He walked on the main deck, I think. I heard Smith sing out, ' Jib sheet carried away ! ' " That is what I said to the mate. He didn't say nothing to me.

Q. Did he ask you the course of the vessel ? A. No, sir.

Q. Didn't the first mate ask you how you were steering, or what course you were steering, and look at the compass ? A. I don't think he asked that of me, sir. I know he looked at the compass.

Q. Do you remember that he asked you about the course of the vessel or not ? A. I don't remember if he asked me about the course, but I know he looked at the compass. Yes, I think he asked me about the course, because I told him we were steering east that night.

Q. How long was it after you saw Smith jump off the fore-castle head before the first mate came out of the after cabin door ? A. I don't think not five minutes, sir.

Q. How long was it after the mate came out before he went aft,—how long did he stay by you ? A. About five minutes, that is all, sir.

Q. Did you see where Smith went when he jumped off the fore-castle head ? A. No, sir.

Q. Did you see him after that ? A. No, sir.

Q. Now, how long was it after the mate went away from the wheel before you heard the captain call, " Mr. Patterson " ? A. Not long ; but I can't exactly say. It wasn't ten minutes.

Q. It wasn't ten minutes ? A. No, sir.

Q. Now, how long was it after you first heard the captain call " Mr. Patterson ! " before he came through the after cabin door to the wheel ? * * * A. About five minutes, as near as I can say, sir.

Q. When the captain came to you at the wheel, was he dressed or not ? A. He got his trousers on him ; but I don't remember if he got the coat.

Q. Which side of the cabin did the mate get off from the poop-deck when he left you? A. The aft side, sir.

Q. And you heard the "Oh, oh!" soon afterwards? A. Yes, sir.

Q. Did you see anybody at that time? A. No, sir.

Q. Did you hear anything but that? A. No, sir; I didn't hear nothing, only he sung out twice, "Oh, oh!" I can't say who it was, — whose voice it was.

Q. And you heard nothing else, and saw nobody? A. No, sir.

This witness further testified that he remained at the wheel till nine o'clock the next morning; that he went forward the first time with the captain at about the time he left the wheel and that during that day he "was sometimes in the fight and sometimes at the wheel"; that the day following, Thursday, the 22d, the witness and Henry pumped out the vessel at four o'clock in the morning; that at six or seven the fore-castle door was nailed up and the prisoners fastened in the fore-castle, and that he was present and witnessed the surrender, and assisted in taking out Smith and Miller from the fore-castle and in putting Glew into his bunk. Witness further testified that he was present, on top of the cabin shortening sail, when Miller was being ironed and triced up in the rigging, and did not see Glew leave the wheel or do anything.

Mr. Sennott cross-examined the witness at considerable length concerning the condition of the vessel when she left New Orleans, the extra labors performed by the men in getting her into shape, and the treatment of the men by the captain; also as to the condition of the jib-sheet and the pennant and the swinging of the block at the end of the pennant, at the time Smith and the second mate went out on the jibboom.

On re-direct examination the witness explained that the pennant was swinging after the jib-sheet parted; but that the outer jib was hauled down, so that the pennant and block rested upon the jibboom where they could not swing, before the mate and Smith went out on the jibboom.

EXAMINATION OF HENRY MALAHEINE.

Henry Malaheine testified that he was born in France, and joined the "Jefferson Borden" in Calais, France, in January, 1874, and was on board that vessel on her late voyage from New Orleans to London; that about the 15th of April last, after he had been bailing out the cabin and had gone forward, Miller, in the presence of Smith and Glew, questioned him concerning the cabin, and whether the captain's wife had any jewelry, and if he knew where the vessel was; that Miller told him the next time he went into the cabin to look in the log-book and find out where the ship was; that about the 18th of April Miller, Smith and Glew were talking about fire-arms, and Miller asked him if the captain had any revolver, and upon his replying that the captain had a revolver and a double-barreled gun, Miller said, "That is no such thing; the captain has got no such thing on board"; that on the night of the 20th of April, at eight o'clock, he and Miller, Smith and Glew went into the forecastle and lit their pipes, and Miller, Smith and Glew went on deck; that he never knew Miller and Glew go on deck before at that time, but that they usually turned in as soon as they came to the forecastle; that Miller and Glew returned to the forecastle in fifteen or twenty minutes and got into their bunks with their clothes on, except their coats and shoes, and that witness then went to sleep.

The examination of this witness then proceeded as follows:—

Q. After you went to sleep will you describe the next thing you knew or saw? A. The first thing after that I happened to wake up. I heard a noise in the forecastle, and I saw a lamp burning, and Miller and Smith and Glew was there.

Q. Where were they? A. In the forecastle.

Q. Whereabouts? A. Inside, sir.

Q. In their bunks or not? A. No, sir. I asked them, "What time is it?" and they said, "Eight bells"; and Glew he replied and said, "Your watch is over; there is no wind. We tell the mate you are sick, and the mate said,

'Better let you sleep.'" At the same time I saw Miller with a muffler in his hand. At the same time he took me here [*by the throat*], and put his hand on my mouth [*forcing it open*], and put in a handkerchief. I tell him what was he going to do with me. I said, "You going to throw me overboard?" I never done no hurt to you. It is no use to throw me overboard." They no give me no answer. At the same time Smith he took my hand and hold on to my hand, and at the same time Miller he make fast the muffler, and after they make me fast,—Glew was standing there,—he went on deck, and Miller say, "Come out your bunk." I come out, and they carry me forward, and at the same time they carry me forward, I look aft, and I see Glew standing on the starboard side, on the after part of the starboard house, looking aft, and they carry me forward to the fore hatch, and when he come to the fore hatch, he shove me down.

Q. Who did that? A. Miller.

Q. Was anybody with him? A. Yes, sir.

Q. Who? A. Miller had my arm, and Smith had the other one. Then Miller he jump down the hold, and Smith he take a line about so thick [*holding up his finger*],—about three fathom line,—and make it fast to the stanchion, and make me fast in the middle, so I couldn't get away. They been there about ten minutes.

Q. You say "the fore hatch." Which one do you mean? A. The one forward of the foremast.

Q. Go on. A. Then the men went off, and about five minutes afterwards Miller come to the hatch and ask me, "You all right there?" I said, "Yes, I all right." That time I had got the handkerchief out of my mouth so I can talk. Then he went away again.

* * * * *

Q. At the same time when Miller and Smith were down this fore hatch with you, did they say anything? A. Yes, sir.

Q. What? A. Miller say, "You damn son of a bitch! you helped the captain to put me in irons. I have got you now," he says.

The witness further testified that he worked himself loose, and worked his way over the cargo to the after part of the vessel, and crawled under the cabin floor; that he was six or seven hours doing this; that he heard Mrs. Patterson speak to the captain in the cabin, and he made a noise, and the captain heard him, and let him up through the lazaret into the cabin.

Cross Examination.

On cross-examination by Mr. Hill witness testified that Miller afterwards told him that it was between eleven and twelve o'clock that they tied him and took him out of the fore-castle.

On cross-examination by Mr. Field witness testified that Glew was on the same watch with him all the voyage ; that Glew was not much of a sailor, and was not a troublesome or quarrelsome man ; that Miller has told him since that it was after the mates were gone that they bound him, and that Glew, when he asked him why he did it, said, "I got nothing to do with it ; the men forced me to do it."

EXAMINATION OF FREDERIC A. PETTIGROVE.

Frederic A. Pettigrove testified that he was a Deputy United States Marshal, and that on the 10th of July he went on board the steamship "Batavia," at the Cunard Wharf in East Boston, with a warrant for the arrest of the prisoners, and received them from the English officers who had them in custody.

EXAMINATION OF AVERY PLUMER.

Avery Plumer testified that he came from Europe on the steamship "Batavia," which arrived at East Boston on the 10th of July ; that he went on board the "Batavia" at Liverpool ; that she stopped first at Queenstown and next at the wharf in East Boston ; that he saw three men on deck several times, but could not swear that the prisoners were the three men.

Cross Examination.

Being cross-examined by Mr. Hill witness testified that he first saw the three men on board ship, and that they came in the ship.

EXAMINATION OF HENRY AIKEN, recalled.

Henry Aiken being recalled testified that when the captain was putting Smith in irons Smith said, "I killed Charlie"; that the captain then spoke to Glew, and Glew said, "I had nothing to do with it," when Smith slewed round to him and said, "You are innocent now!" also that at another time, after the day when they had Miller aft, the captain said to Smith, "I want you to go forward and show me where the second mate was when you killed him," and that the captain, Smith and the witness went forward and up on the fore-castle, and Smith pointed "right over the bow, on to the bowsprit, where he would come in on the fore-castle," and said, "There is where he was."

EXAMINATION OF WILLIAM J. PATTERSON, recalled.

Captain Patterson being recalled testified that at the time of the surrender, when the prisoners had their hands out of the window, Smith said he killed the second mate; that about a week afterwards Smith went to the fore-castle deck, and pointed down just outside, alongside the bowsprit, and said the second mate was standing there, and he struck him on the head with a capstan-bar, and that he made no noise.

EXAMINATION OF MRS. EMMA J. PATTERSON.

Q. (by Mr. Cummings). Are you a married woman? A. I am.

Q. Who is your husband? A. William Manson Patterson.

Q. Have you ever been on board the "Jefferson Borden"? A. I have.

Q. Were you on the voyage which she took from New Orleans to London? A. I was.

Q. Did you ever see either of the three prisoners in the dock before? A. I have seen them all.

Q. Where? A. On board the "Jefferson Borden."

Q. On that voyage? A. On that voyage from New Orleans.

Q. Do you recollect at any time in the voyage the defendant Miller's being put in irons? A. I do, very well.

Q. What was done with him afterwards,—after he was ironed,—immediately after, if you recollect? A. He was standing, when I saw him, on the deck with his hands raised.

Q. At the rigging? A. On the main rigging.

Q. How was he standing, so far as his feet were concerned? A. With his feet on the deck,—with his hands raised.

Q. When did you see him next? A. I should think it might have been five minutes afterwards.

Q. Where was he then? A. He was then standing on the rail of the vessel.

Q. On the twentieth day of April, when did you last see the mate of the vessel? A. Between the hours of six and eight o'clock in the evening.

Q. Had you seen him during the day? A. Yes, sir; several times.

Q. What were you doing that evening? A. I was reading aloud from "The Life of Father Taylor" to my husband in the after cabin, and he came in several times during his watch on deck and sat down several minutes and listened to the reading.

Q. You saw him last about what hour? A. A little before eight, I should think.

Q. What was he doing at that time? A. Nothing at the time he came in and sat down.

Q. Did you see the second mate during that day? A. I don't remember when I saw the second mate last; but the last I heard of him was about ten o'clock.

Q. Did you hear him? A. I heard him singing. I was about to say I didn't see him, but, sitting in the after cabin, I heard him singing on the quarter deck.

Q. What time? A. About ten o'clock in the evening.

Q. At what time did you go to bed? A. Very shortly after. It was about ten,—not far from that hour.

Q. Did you ever see either of the mates after the time you have mentioned? A. I never did.

Q. What time did you go to sleep, if you remember? A. I don't remember.

Q. You did go to sleep? A. I did, very shortly.

Q. When did you wake up? A. I don't know the hour when I was awakened.

Q. What awoke you? A. I was awakened by hearing a

man in the after cabin calling and saying, "Captain, go forward, quick! John is hurt, and we think his leg is broken." My husband sprang up from his bed saying, "All right!" and started.

Q. Did you recognize the voice of the man that spoke?
A. I didn't know then who it was. I knew it was not either of the mates, and it was one of the seamen. I didn't know whether it was Miller or Jake.

Q. Did you ever see any of the men in the after house?
A. I never did. When my husband got to the door the same voice said again, "Do hurry, for God's sake!" Hearing him make that remark, I recognized it was a seaman instead of a mate who should have called him. I cautioned him to be careful. He went directly out. When next I saw him he came to the room and was dressing himself. I said, "Who called you?"

Q. You need not state what was said. A. He shortly went out of the room. In a few minutes I followed, after he dressed himself and left the room.

Q. Did you see the steward that night? When did you see him last, to the best of your recollection, in the evening?

A. I don't know what hour in the evening.

Q. Did you see him after you and your husband were awakened in this manner?
A. After my husband left the room I followed and went into the starboard entry. My husband was there. George Miller was standing very near the window to the steward's room when I saw him. I heard him say, "Captain, why don't you go forward? We are afraid the man will die." My husband said, "Where are the mates?" He said, "I don't know; but why don't you go forward and attend to that poor man?"—"Where are the mates? Call the steward." My husband called the steward, and came out and ordered him forward to see if he could see the mates. He soon returned and reported—

Q. You need not state what he said, unless some noise was made that could be heard all over the vessel, or could be heard by one of the defendants. Did you hear any shout?

A. When my husband first left the room, I heard him calling "Mr. Patterson! Mr. Patterson!" before he came back.

Q. How loud? A. So I heard him very distinctly in my room, which was in the after part of the house.

Q. Where did you go and what did you do? A. I remained in the forward cabin. I cannot tell just when I left the room. I was sometimes in the forward cabin and in the after cabin in the entries, and went on deck.

Q. Did you go on deck in front or behind the after house?

A. In front of the house, on the main deck. My husband continued calling for the mates repeatedly.

Q. Was there any reply? **A.** No reply.

Q. I will ask if you saw any footprints on the floor of the cabin subsequently? **A.** I did. I don't remember at what time, but I remember we examined the footprints.

Q. What were they? **A.** They were of a person in their stocking feet, we supposed. [*Objected to.*]

Q. What were the footprints? **A.** They were the footprints as of a person in their stockings or bare feet.

Q. You say you don't recall when you saw it: can you fix the time within a day? **A.** Yes, sir; before morning, or at the early morning; no earlier than that.

Q. Before going any further do you recall with reference to the 20th, when you last had seen vessels in sight? **A.** We last saw vessels on the 19th.

Q. You recollect when you next saw a vessel? **A.** I don't know. I know we saw vessels on the 26th, and that before that, in the night, there was one seen. I don't know at what time.

Q. Go on and state what occurred on that night,—what was done in the cabin that night? **A.** The captain ordered the steward—

Q. What did you do? **A.** May I tell that the steward was ordered down to call the mates?

Q. How long was he gone? **A.** A very few minutes. I don't know how long. He made a report when he came back.

Q. Do you know what time that was? **A.** I don't. The doors were fastened,—the cabin doors,—I think, about an hour afterwards.

Q. Did any person go out of the cabin that night? **A.** The captain and steward and I went out of the cabin on to the quarter deck.

Q. How many times? **A.** I don't know. Several times.

Q. What was done when they went out, if you know? **A.** I don't know.

Q. Did you see anything forward that night? **A.** I did not until daybreak.

Q. At what hour in the morning? **A.** I could not tell what hour.

Q. Can you tell within two or three hours? **A.** I should think about four hours earlier.

Q. In a very general way describe what was done the next day, the 21st, on board that vessel? **A.** About five o'clock in the morning of Wednesday, I think, while my husband was getting his gun in order, I heard him speak. I was then

in the mate's room, keeping watch, looking out of the open window. I was watching to see if the men came aft. I heard my husband talking, and went out and found he was just taking Henry out of the lazaret from the entrance through the aft companion way. I heard him ask Henry—

Q. What was done? A. Both the steward and captain went out on the deck. I don't know at what hour. I don't remember whether they went out on deck before we got Henry or not. I remember they went out early. I remember the steward went out on the starboard side at one time with a bolt in his hand. My husband went out. He called on George Miller, on William Smith and on John Glew. He called them each separately.

Q. What did he say? A. He asked them where were the mates. They made no reply. He told them to surrender themselves. They made no reply. I heard the steward ask, "Where are the mates?" I heard Miller say, or Smith, I am not positive which, "Oh, yes; you would like to know where are the mates." I heard one of them say, "The mates are all right"; but to my husband's questions I heard no answer. My husband first fired with his double-barreled gun from the mate's window. He waited, I think. He demanded them to surrender again. He told them he should have charge of his vessel; they must surrender. He asked a great many times, "Where are the mates?" and no answer. I don't remember at what time they commenced firing, but I do remember that both my husband and the steward advanced on the port side of the vessel while I kept watch on the lee side. At the first I remember that John Glew was watching round the corner of the forward house round the port side. Miller was on the starboard side and Smith looking over the top of the house, about the centre. Both my husband and the steward went up and fired on the men. I kept watch on the lee side to give the alarm should they come round that side and surround them. After they had fired several times they ceased, and my husband would again say, "Where are the mates? Will you give up the mates?" I remember one time in the forenoon my husband went out and talked with them, told them it was no use; it would be better for them to give up.

Q. Did you hear this? A. I heard this.

Q. Whom did he talk with? A. He didn't direct his conversation to any one in particular that time. All three of the men were to be seen. He said, "It will be better for you if you give up the mates. I must have charge of my vessel. Now will you give them up? I shan't cease until I

have the mates." I don't remember all he said at that time, but I do remember that he stood there and talked in that manner all along, and got no reply. I once heard Smith say after my husband had fired, "We will not give up the mates until them shots is stopped," and my husband said, "These shots will be stopped when you give up the mates, and not before." We waited. Glew was not to be seen for a short time. We waited, hoping he had gone to release the mates. We waited. Glew was not to be seen, but very soon we saw him again.

Q. What did these men do when they were fired at? A. After they had advanced and fired and turned to go back to the after house, these men would throw bottles, iron bolts, broken parts of grindstone and broken parts of stove. The steward was hit several times. I saw my husband hit twice.

Q. What was he hit with? A. He was hit with a piece of iron and leg of a stove in his face, and he put his hand up, and came back covered with blood, the blood running down his whiskers. He was hit with a bottle, I think, on his wrist. In the forenoon I went out on the deck.

Q. This is Wednesday? A. This is Wednesday. I went out on deck on the port side to talk with the men.

Q. How far did you advance? A. I went nearly to the forward part of the main hatch. I said, "Won't you give up?" I called them each by his name, "John Glew, William Smith,"—we called William Smith "Bill" on the vessel,— "George Miller, won't you give up,—give up the mates?" They made me no answer. I stood there and asked them many times. No answer. Again, in the afternoon, there was firing at intervals; after they had fired they would wait. Towards the latter part of the afternoon, I don't know what hour, the weather began to look threatening, and sail was being taken in on the vessel. I was keeping watch—the wheel was lashed—while my husband, Jake, the steward and Henry were taking sails off the after part of the vessel. While they were doing this, I went forward as far as I had been in the forenoon. It was raining; the decks were covered with water. I went forward and called "George Miller!" He was looking round the port side of the house. I stretched out my hands and begged him to give up the mates. "Won't you give up the mates? George, will you give up the mates? George, tell Bill Smith to look round the corner of the house, I want to speak to him. Where are the mates? Will you give them up? You can stay forward, if you please, but give us the mates. George, will you give us the mates?" No answer. After a time John Glew looked round on the port side. I called him, "John, won't you give up the mates, for

my sake?" No answer. I called repeatedly for William Smith, but didn't see him at that time. I said, "Where are the mates; have you killed them?" No answer. I asked that question many times. My husband came to me and asked me to go into the after house. I said, "I cannot go until they have given us the mates. Let me stay here until they give us the mates."

Q. Was there anything important that happened that day that you have not stated? If not, what was done that night? A. I don't remember there was anything done in particular, with the exception of watching.

Q. Did you go to sleep either of those nights? A. Wednesday night I think I slept between eight and ten; Tuesday night not at all; after we were called I kept watch.

Q. Come to Thursday morning: were you present at the time when the men surrendered? A. I was.

Q. How near? A. I was in the galley when my husband said they said they would surrender.

Q. Could you hear what the men said? A. After they surrendered? No, sir; I then went out on deck. I heard my husband question the men, but I did not hear their answers.

Q. State what questions you heard your husband put. A. My husband was at the window on the starboard side, and I heard him say, "Where are the mates?" I didn't hear the answers.

Q. Could you tell whether there was an answer? A. Yes, sir; but I could not tell the words. I could hear a low voice. I then heard him say, "Who threw them overboard?" I didn't hear the answer to that. I then heard him say, "Did you kill them and throw them overboard?" and then I went into the cabin. I didn't hear any answer to this. The next time I saw the men it was half an hour from that time. I saw all of them. At this time I am speaking about I saw George Miller and William Smith lying side by side forward of the forward house. I saw John Glew lying in his berth in the forward house in the forecabin. I went out and asked George Miller, — I said, "George, can I do anything for you to make you more comfortable?" He looked up and said, "I am cold." Henry Malaheine was in the forecabin. I called to him to bring a blanket and cover George. I said, "Is there anything else I can do for you?" He said, "No." I said, "Bill, what can I do for you?" He said, "Nothing. Let me lay here; I am too wicked." I conversed with them both, but I don't remember what I said. I told them if there was anything I could do I would do it at any time willingly. I looked at the wound on William Smith's wrist.

I asked my husband if I could assist in dressing their wounds. He said he would attend to that. I then went into the fore-castle and spoke with John Glew. I said, "John, what can I do for you?" He said he wanted nothing. My husband had reported to me that John — He said he wanted nothing. I said, "Shall I make you some gruel?" He said, No, he only wanted cold water. Henry Malaheine spoke and said he would give him some water. I then went aft. This was Thursday afternoon.

Q. Did you ever hear Miller make any statement as to what had become of the mates? A. I did.

Q. When and where? A. Several days afterward — I think Saturday — my husband told him to go —

Q. Did you hear your husband speak to him? A. I did, — to go and stand in the same place the mate did and look the same way he was when Miller killed him. He came and stood abaft the main hatch, nearly amidships, a little towards the starboard side; that is, facing towards the starboard side. He said the man stood in that position. He said he was secreted on the starboard side of the after house. He said the mate had been looking forward and aft into the cabin. He said he got down from his position on the starboard side of the house and came up towards the mate; that the mate said when he saw him coming, "What do you want?" He said he made no reply, but struck him with a piece of iron, — felled him to the deck, — and that then William Smith and John Glew came aft and helped him pick him up and throw him overboard. My husband said, "What did you do this for?" He said, "Well, so far as I am concerned, I fancied I had been imposed upon." My husband said, "How have you been imposed upon?" He said, "I have been growled at." I said, "Who commenced the growling when we left New Orleans?" He said, "I did." I said, "Had you been an officer of a vessel and had a man conduct himself as you did when we left New Orleans, what would you have done with him?" Miller said he should have stopped him in some way. He told the vessels he had been second mate of. I told Miller John Glew had told me he did not assist in throwing the mate overboard. Miller said, "John must tell the truth." My husband said, "When did you and Smith plan this work?" He said, "I got my orders from Smith that night at eight o'clock." He said, "I have been in vessels where I have been growled at a great deal worse than I have been here, and never thought of doing such a thing, and should not have thought of it now if I had not been put up to it by Bill." He looked up and said, "The mate had on a cap like yours, sir," looking at my husband. My hus-

band held the iron in his hand and raised it and said, "Was this what you struck the mate with?" He said, "Yes." My husband said, "What were you going to do with my wife?" He said, "I don't know, sir." My husband said, "What were you going to do with the vessel?" He said, "We were going to steer the same course you had been steering until we made land; then we were going to scuttle her and take to the boat." My husband said, "Are you a navigator?" He said he was not.

Q. Did you look over the wardrobe of the mate subsequent to this time? A. I did.

Q. Do you recollect any particular articles that were missing? A. I remember his great coat.

Q. State anything else that you noticed were missing. A. His heavy sea-coat, his heavy sea-boots and a cap like the captain's. I bought this cap and the mate's, and gave it to each of them. It was the same cap he had on when Miller made the statement.

Q. Did you hear Miller make any statement at any other time than this? A. I don't remember any other general statement, although I remember at one time, when I went out to the fore-castle to see Smith, — it was just after meal time; they were all three together, — I went out to see William Smith. I said, "Bill, did John help you and Miller throw the mate overboard?" He said, "Yes, he did." John said, "I didn't. How can you say such a thing, Bill?" He says, "Oh, yes; you can talk now. You were just as willing to do it as any of us." Smith said when Glew denied it, "Oh, yes; you can talk now, but you were as willing to do it as any of us." I said, "Bill, what part of the mate's body did John take hold of?" He said, "The legs." My husband said to William Smith, "What did you have against the second mate? Did he ever ill-treat you in any manner?" This was at the same time they were all present. He said, "No, only once. He sent me up to reeve the topsail sheet when the gaff was swinging." I said, "If the second mate had been a hard man, and one you stood in fear of, you never would have tried to kill him, would you, Bill?" He said, "No." I said, "How could you do it when the second mate thought so much of you and was so thankful when we saved you from a watery grave? How could you have killed him?" He said, "I don't know how such a thing happened. I told Miller just how it would end if he commenced his work." He said Miller was always trying to make trouble wherever he was. He was with him in another vessel, and he was always making trouble there. I said, "Why did you ship with him if you knew him to be a troublesome

man?" He said Miller was steady in New Orleans and didn't drink, and he thought he was going to do better. My husband said to Smith, "What did you intend to do with the vessel?" He said he didn't know. Miller says, "What is the use of saying you don't know? Didn't you come and call us and say your plans were all made? It is no use to lie about it now. We have done a wicked deed, and we may as well own it."

Q. Did you ever hear him make any statement about the second mate? A. I cannot tell whether I heard it or it was reported to me. I went to see John Glew. I told him his condition.

Q. What time was this? A. I think this was Saturday, before Miller made his statement.

Q. What did you say to him? A. I told him, as nearly as I can remember, that he had but a short time to live; that his wounds were fatal we considered.

Q. Did you make any examination of them? A. I went out in the first place and carried a Bible. I had previously marked some passages to read to him. I read them. I told him I thought he could live but a very short time. I tried to pray with him. I told him there was hope for him yet. I suppose it is not necessary for me to tell the exact language?

Q. Tell it if you remember it; if not, tell the substance of it. A. I told him he would live but a short time. God was able to forgive his sins however dark they were, and tried to pray with him. After I had talked with him in this manner, — I don't remember that he made any response at that time. — I asked him if he would like to tell me all he knew about the murder of the mates and this mutiny, and he said, "Yes." He said as nearly as he could remember, or as nearly as he knew, between the hours of ten and eleven, while he was asleep in his berth, he was called to the door of the fore-castle by William Smith, who told him when he got there that he and Miller were that night going to kill the captain and the officers and take charge of the vessel, and that he had got to help at the work. John said that he answered William Smith and said, "I can't; it is not in my power." He said that Bill then said, "If you don't we will serve you the same as the rest." He said he then replied, "Well, I suppose I shall have to." I said, "Where were you standing when the captain went on deck?" He said he was standing abaft the forward house. I said, "What did you have in your hand?" He said, "I had a capstan-bar, that was all." I said, "Did you help throw the mate overboard?" He said he did not. I said, "Was that the first you ever knew of it?" He said, Yes, but that Bill

told him that night, while he was talking with him at the door, he had been planning to do it all the passage, because he had had so much work to do, and had been kept up in his watches. I said, "Did you and Miller talk about this?" He said, "I have not had any talk with Miller since we had a row about who should sweep the fore-castle." I said, "You and George and Bill were talking together at eight o'clock, were you not?" He said, "Well, we were not talking about that; the second mate was standing near us." I asked him if he had a mother, and he said he had. I said, "Shall I write to her?" He said, "No; I don't want her to know anything about it." I told him anything I could do for him at any time I would do it; to let me know by the boy, Henry, and I was willing at any time to help him in any manner. I looked at his wound. I do not remember whether it was at that time, but I think it was. I was surprised to see that it did not look inflamed. I afterwards visited him. I examined him as best I could and looked at his tongue; it was never coated but slightly; his flesh was never feverish. I visited him four or five times.

Q. How was his appetite? A. I asked about his appetite, and he said he had a good appetite. I made gruel at different times and sent by the steward and carried it myself. I never assisted in dressing their wounds. My husband attended to that; I got the bandages only.

Q. Was this conversation that you detailed before or after you examined his wounds? A. I think the conversation was before. I am not positive.

Q. Where was the point on the deck where Miller said the mate was struck down? A. Aft the main hatch, nearly amidships.

Q. When did you notice that spot first? A. I don't remember of noticing it particularly until Miller came there.

Q. Did you pass that spot on the day of Wednesday, do you recollect? A. Yes, sir.

Q. Did you notice anything peculiar about it? A. I did not.

Q. How were the decks that day? A. There was considerable water on deck through Wednesday and through Tuesday night. The seas were washing over the vessel.

Q. (by Mr. Field). How long have you sailed the seas? A. I have crossed the Atlantic sixteen times. I have been going to sea the greater part of the time since June, 1867.

Q. You never saw Glew until this voyage? A. No, sir.

Q. Did you see much of him? This was about forty-seven days from the time you left New Orleans. Were your habits such you were accustomed to see the crew? A. I saw less

of this crew than I generally had on account of the severity of the weather. I saw considerable of John Glew, and conversed with him at different times.

Q. I am speaking of your observation of him before the 20th. What sort of a sailor was he? A. Not very good, if I am a judge.

Q. What sort of a man in reference to being noisy and quarrelsome, or not? A. I don't know much about that. I was in the after cabin so much of the time.

Q. Did you ever know of his having a quarrel with any one seriously on board vessel? A. I knew his misconduct at the time Miller was put in irons.

Q. Did you see that? A. I saw some of that.

Q. Was he or not, as far as you observed, a quarrelsome, fighting sailor, or not? A. I should not say he was a fighting sailor.

Q. Was he a quarrelsome sailor? A. Rather fault finding, I should say. I don't know much about that. The most I saw of him would be when he was at the wheel and I went to speak with him.

Q. Do you know any misconduct of his except that you referred to when Miller was put in irons? A. No, sir; I don't.

Q. Did Glew tell you where his parents lived? A. Near Calais.

Q. Did he tell you whether he had a father and mother? A. He told me he had a mother. I asked him if he had a father and mother. He said a mother.

Q. Did he say whether he had brothers and sisters? A. No, sir.

Q. So far as you know has he relatives or friends this side of the Atlantic Ocean, or anybody who knows anything about him? A. So far as I know he has not.

Q. I suppose you find some difficulty to remember exactly what was said on any occasion, — the exact words of it, — don't you? A. Part of it I remember very vividly. A great deal I presume I do not.

Q. The conversation you would find it somewhat difficult to give in the exact words after this time? A. Very likely I might. I give it to the best of my recollection.

Q. It has been a matter of frequent conversation with you and others? A. I have conversed about it; yes, sir.

Q. You have heard others say what they have heard about it? A. I presume they have told me. I have talked with others.

Q. It would be somewhat difficult, if you were going to tell everything you heard said, to tell exactly what was said by

any one person and who said it? *A.* Some of the conversations it would be difficult for me to remember, perhaps, exactly.

Q. (by *Mr. Sennott*). The weather was very severe, you just observed? *A.* Yes, sir.

Q. How long did the severity of the weather continue? *A.* We had a great deal of severe weather in March and from the 1st of April.

Q. To the 16th it was very severe the greater part of the time? *A.* Yes, sir.

Q. It was extraordinarily bad? *A.* Yes, sir.

Q. Of course that enhanced the difficulty of working the vessel? *A.* It must, of course.

Q. When the vessel left New Orleans were you on board at that time, or did you go down in another vessel and go on board? *A.* I left New Orleans in the vessel.

Q. Did the captain leave with you? *A.* He did.

Q. Were your apartments in good order, so they didn't ship much water, or did you find water even in your own room a good deal of the time? *A.* I found water in the cabin. During the heavy gales the water came in.

Q. So you were obliged at times to help them bail it out? *A.* I did so.

Q. I suppose, now, if the ship hadn't been rather short-handed, the ladies would not have had to do that? *A.* I never knew a sailor to go into the cabin to bail it out. It is the steward's duty. I did that because I didn't like to speak to the steward. When my husband was on deck with the rest of the men I did that myself rather than call the steward.

Q. You supplied the labor that was wanting because he was not there? *A.* The labor was there. It was the steward's duty.

Q. You thought he had enough to do, taking the weather into consideration? *A.* No more than all stewards.

Q. You have been at sea seven or eight years? *A.* More than half the time since June, 1867.

Q. Do you know whether the vessel when it went down was exactly in the condition it should be? *A.* I supposed it was. I always trust that to my husband.

Q. You left that to him? *A.* Yes, sir.

Q. You made no remarks about what didn't concern you and him in your immediate place? *A.* No, sir.

Q. You didn't criticise the appointments and equipments of the vessel forward much? *A.* Not at all, sir. I didn't know anything about that.

Q. (by *Mr. Sanger*). You were asked as to whether you had conversed with various parties in reference to it and

heard their statements. Then you were asked whether you could distinguish, when you made statements, what you heard from different people. I want to know whether that has any reference to the conversations you have testified to here? A. Not in the least. I understood the gentleman to refer to persons outside of this altogether,—with friends I have in the vicinity of Boston.

EXAMINATION OF WILLIAM S. FROST.

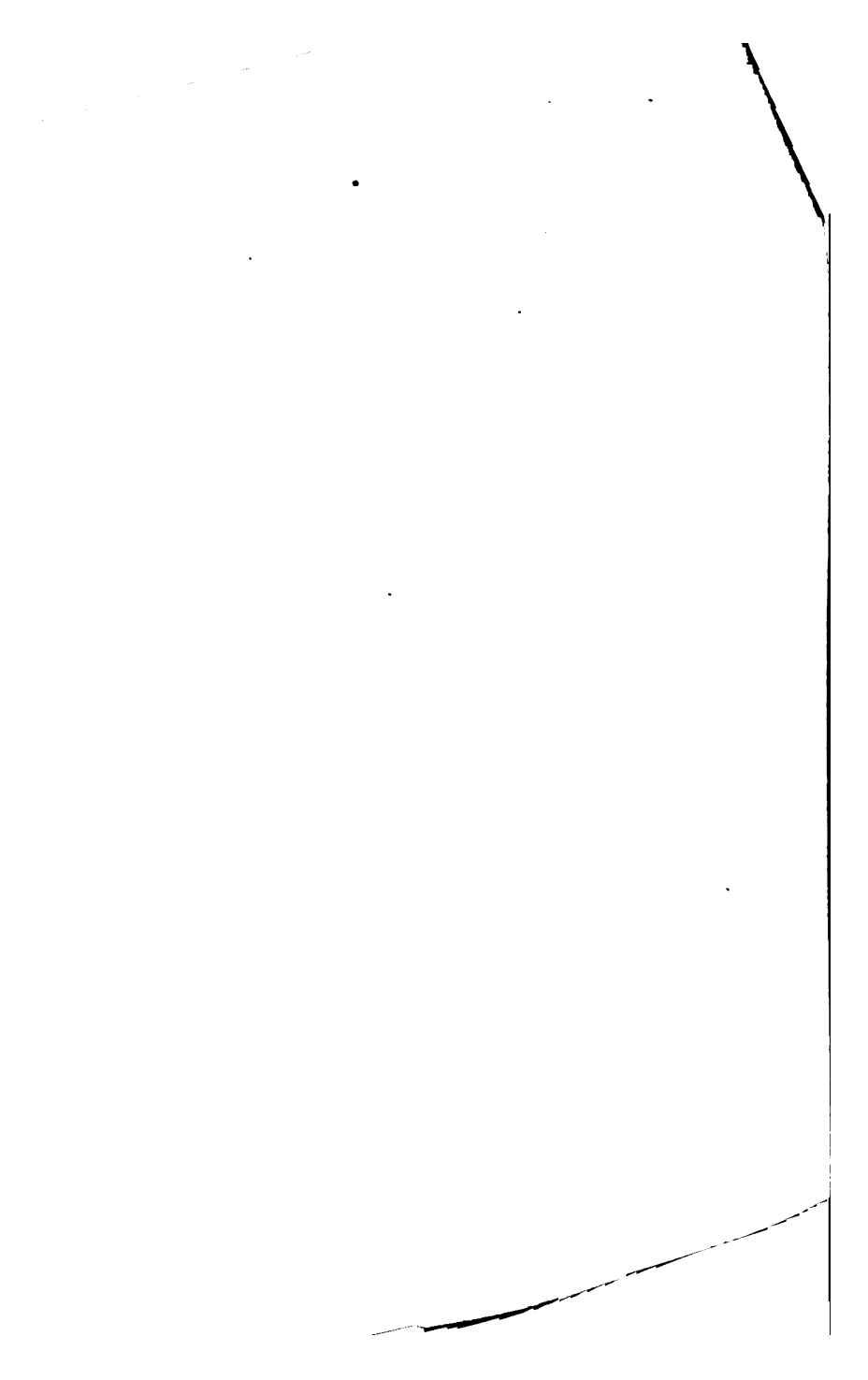
William S. Frost testified that he was registrar of the Boston Custom House, and as to the course of business in his office in regard to copies of enrolment, in regard to the registering of vessels, and produced a copy of the registry of the "Jefferson Borden," entered in due course of business in a Custom House record-book, which was admitted in evidence and read to the jury.

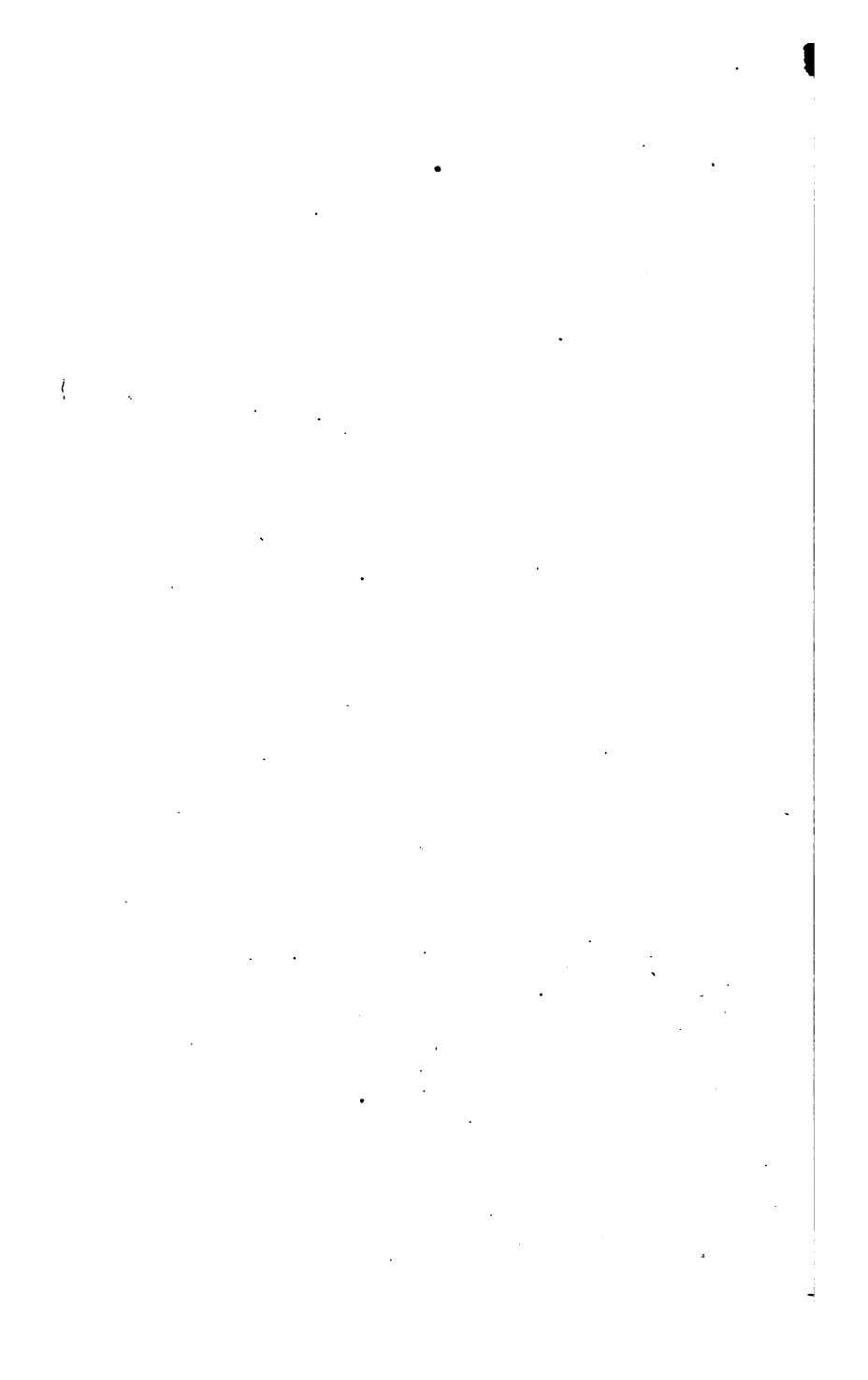
EXAMINATION OF RICHARD M. HODGES.

Richard M. Hodges testified that he had been a physician and surgeon for twenty-five years; that a person stunned by a blow on the head and thrown in the water would sink, and would not rise again until decomposition took place, which would be more than a day thereafter.

EXAMINATION OF WILLIAM L. RICHARDSON.

William L. Richardson testified that he had been a physician for eight years with some experience in surgery; that a person completely stunned by a blow upon the head and thrown in the water would sink immediately head first, and would not rise again until decomposition took place.





AP AMQ MUJ
The Jefferson Borden mutiny :
Stanford Law Library



3 6105 044 158 561

